



## **MULTIMODAL - PORTS & LOGISTICS**

**Version 1/2010**



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**Part 1**

**GENERAL TERMS AND CONDITIONS**

**General Terms and Conditions**

**Section 1**

**Application of terms**

Any contract of insurance effected pursuant to the Multimodal – Ports & Logistics Policy Conditions 1-2010 shall incorporate the general terms and conditions (Part 1) and the terms and conditions of Part 2 (Liability cover) and Part 3 (Exclusions and Limitations). The terms and conditions set out in Part 2 and Part 3 in this policy shall prevail over the general terms and conditions in the event of a conflict between them, but any terms appearing in the Certificate of Insurance shall prevail above all others.

**Section 2**

**Application for insurance**

Any application shall be in the form specified by the Company from time to time. All particulars and information given in the course of applying for insurance shall be deemed to form part of the contract of insurance between the Company and the Assured.

**Section 3**

**Certificate of Insurance**

- 3.1 If the Company accepts an application for insurance the Company will issue a Certificate of Insurance, which shall state:
  - 3.1.1 Name of Assured on whose behalf the Insured Activities are insured and name of any co-assured;
  - 3.1.2 The conditions of insurance and any special terms and/or warranties;
  - 3.1.3 The Insured Identity and the Insured Activities;
  - 3.1.4 The Attachment Date of the Insurance and the Period of Insurance;
  - 3.1.5 The maximum amount insured;
  - 3.1.6 The applicable deductibles.
  - 3.1.7 The applicable premium
- 3.2 If at any time during the Period of Insurance the terms relating to any Insured Activities vary the Company will issue an endorsement stating the terms and effective date of such variation.
- 3.3 Every Certificate of Insurance and any endorsement thereto issued by the Company shall be conclusive evidence as to the terms of the contract of insurance or as to the variation of such terms as the case may be.
- 3.4 Others than the Assured and Co-Assured may only derive rights from the policy through a written statement to that effect made by the Company



## Section 4

### Premiums

- 4.1 The Assured shall pay the premium on such dates as the Company shall specify and in default of such payment the Assured shall have no rights under this Policy.
- 4.2 The Company may require the Assured to pay all or any part of any premium due in such currency as the Company may specify.
- 4.3 No claim of any kind whatsoever by the Assured against the Company shall constitute any right of set-off against the premiums or other sums due to the Company or shall entitle the Assured to withhold or delay payment of any premiums or other sums due under this Policy.
- 4.4 If any premium or other sum due to the Company is not paid on, or before, the date specified by the Company, interest shall be payable from the date specified for payment thereof to the date of payment at a rate which the Company shall from time to time determine.
- 4.5 Where an Assured has failed to pay, either in whole or in part, any amount due from the Assured to the Company, the Company shall have the right to serve a notice upon the Assured requiring him to pay such amount by any date specified in such notice, not being less than seven days from the date on which notice is given. If the Assured fails to make such payment in full on or before the date so specified, the insurance of the Assured shall be cancelled forthwith without further notice of other formality. Notwithstanding that the insurance has been cancelled by virtue of this clause, the Assured shall be liable for all or any monies which have fallen due under this policy prior to such cancellation.
- 4.6 The Company shall be entitled, once premiums have become due and payable, to commence an action against the Assured or any other liable person, for the recovery of any unpaid premiums and other sums.
- 4.7 The figures, on which the adjustable premium is based, must be declared within 30 days of the end of the accounting year, failing which, the Insurers are entitled to charge an additional premium of 25% of the minimum and deposit premium declared at inception.

## Section 5

### Claims

- 5.1 Upon the occurrence of any casualty, event or matter liable to give rise to a claim by the Assured against the Company, it should be the duty of the Assured and his agents to take and continue to take all such steps as may be reasonable for the purpose of averting or minimizing any expense or liability in respect of which he may be insured by the Company. If the Assured commits any breach of this obligation the Company may reject any claim by him.
- 5.2 If the Assured becomes insolvent during the course of any claim to which the Company has given support, the Company shall thereupon reserve the right to withdraw that support forthwith.
- 5.3 It is a condition precedent to Company's liability hereunder that the Assured shall give prompt notice in writing to the Company of any claim, dispute, matter or event, which has arisen or has occurred and which is liable to give rise to a claim under this Policy, and give the Company all relevant facts of which the Assured has knowledge at the time of any notification;

Without prejudice to the duty of prompt notification, as mentioned in the above paragraph, a claim from an Assured against the Company shall be



dismissed and the Company shall have no further liability to indemnify the Assured's if an Assured:

- 5.3.1 Fails to notify the Company of any casualty, event or claim referred to in this article within one year after he has knowledge thereof or ought to have had knowledge thereof;
- 5.3.2 Fails to submit a claim to the Company for reimbursement of any liabilities, costs or expenses within one year after they have paid the claim.
- 5.4 The Assured must at all times promptly provide the Company of any documents, reports, evidence or other information relevant to any claim, dispute, matter or event which has led or which is liable to lead to a claim under this Policy, and which are in the possession or power of the Assured or his agents or otherwise within his knowledge.
- 5.5 When so requested by the Company, the Assured shall promptly produce, or cause his agents promptly to produce all such documents or information of whatsoever nature which are or may be relevant to the Assured's claim or intended claim.
- 5.6 The Assured shall permit the Company or his appointed agent or servant to interview any servant or agent or other person who may have been working for the Assured at the material time or at any time thereafter or whom the Company consider likely to have any direct or indirect knowledge of the matter giving rise to a claim under this Policy.
- 5.7 All lawyers, surveyors or other persons appointed by the Company, or by the Assured with the prior consent of the Company, shall be deemed to be appointed and employed on the basis:
  - 5.7.1 That they have been appointed and employed by the Assured, and continue to be so, at all times;
  - 5.7.2 That they are instructed at all times by the Assured to advise, report to and produce to the Company any and all relevant documents or information in their custody without prior reference to the Assured, all as if such person had been appointed to act at all times and had at all times been acting on behalf of the Company;
  - 5.7.3 That any reports or advices given pursuant to this Section shall not bind the Company to any course of action.
- 5.8 The Company is under no obligation to provide bail or other security on behalf of the Assured, but from time to time the Company may in its sole discretion decide to provide bail or other security on such terms as the Company may consider appropriate.
- 5.9 The provision by the Company of bail or other security, or otherwise acting on behalf of the Assured, shall not constitute an admission of liability by the Company for the claim in respect of which the bail or other security is given.
- 5.10 It is a condition precedent to the Assured's right of recovery under the terms and conditions of this policy that a claim, for which the Assured's are liable, have to be paid by the Assured's before the company can indemnify the Assured's
- 5.11 Where the Company has indemnified the Assured for any claim under this policy, the Company shall be entitled to any recovery from a third party in respect of that claim and the Assured shall, upon first request of the Company, provide all documents to enable the Company to exercise the Assured's rights of recovery.



- 5.12 The Assured shall make no admission of liability nor settle any claim or dispute or proceedings instituted by or against it without prior approval of the Company. If the Assured admits liability or settles the claim or dispute without such prior approval or refuses to settle the claim, notwithstanding that the Company shall have required it to do so, the Company shall not be liable to indemnify the Assured and the Assured will be liable to refund the Company all or part of any costs paid by the Company either to the Assured or to lawyers, surveyors or other persons.

## **Section 6**

### **Cesser of Insurance**

The Assured shall cease to be insured by the Company in respect of all Insured Liabilities upon the happening of any of the following:

- 6.1 If the Assured is served in accordance with Section 4.5 with a notice by the Company requiring him to pay any amount due to the Company and he fails to pay such amount on or before the date specified in such notice;
- 6.2 Where the Assured is an individual, upon his death or if a receiving order shall be made against him or if he shall become bankrupt or make any composition or arrangement with his creditors generally or if he shall become incapable by reason of mental disorder of managing and administering his property and affairs;
- 6.3 Where the Assured is a corporation, upon the passing of any resolution for voluntary winding up (other than voluntary winding up for the purposes of company or group reorganization) or upon an order being
- 6.4 Made for compulsory winding up or upon dissolution or upon a receiver or manager of all or part of the corporation's business or undertaking being appointed or upon possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge.
- 6.5 If the Assured assigns rights and/or obligations under any other contract for which the Assured is insured;

## **Section 7**

### **Effect of Cesser of Insurance**

- 7.1 If the cesser of the insurance occurs because of a failure to pay premiums, the Company shall not be liable for any claims in respect of any Insured Liabilities by this policy, whether the incident giving rise to such claim occurred before or after the cesser of all insurance.
- 7.2 If the cesser of all insurance occurs for any other reason the Company shall remain liable for all claims under this policy arising from any incident which occurred before the cesser but shall be under no liability in respect of any claim arising out of any occurrence or event after the cesser.

## **Section 8**

### **Assignment**

The Assured shall make no admission of liability nor settle any claim or dispute or proceedings instituted by or against it without prior approval of the Company. If the Assured admits liability or settles the claim or dispute without such prior approval or refuses to settle the claim, notwithstanding that the Company shall have required it to do so, the Company shall not be liable to indemnify the Assured and the Assured will be liable to refund the Company all or part of any costs paid by the Company either to the Assured or to lawyers, surveyors or other persons.



## **Section 9**

### **Disputes between Assureds**

In the event of a dispute between Assureds insured with the Company, the Company may insist that the dispute in question is submitted to the Company for its comments prior to the commencement of court proceedings or arbitration. Any such opinion rendered by the Company may not be referred to in any subsequent court case or arbitration. If the dispute remains unresolved then the Company may instruct lawyers on behalf of the parties.

## **Section 10**

### **Interest and set off**

- 10.1 In no case whatsoever shall interest be paid on any amount due from the Company;
- 10.2 The Company shall be entitled to set off any amount due from the Assured against any amount due to the Assured.

## **Section 11**

### **Law and Jurisdiction**

- 11.1 This policy shall be governed by, and construed in accordance with, English Law.
- 11.2 The High Court of London shall have exclusive jurisdiction to hear and determine any claim or dispute under this policy.
- 11.3 The Insurance provided by the Company shall not nor is intended to confer any right or benefit on any third party under the Contracts (Rights of Third Parties) Act 1999 or any similar provision, enactment or principle of law contained in the laws of any State which purports to do so.

## **Section 12**

### **Marine Insurance Act**

This policy and all contracts of insurance made by the Company shall be subject to and incorporate the provisions of the Marine Insurance Act, 1906, of England and Wales and any statutory modifications thereof except insofar as such Act or modifications may have been excluded by this policy or by any terms of such contracts.



## **CLASS 2 – LIABILITY** **RISKS COVERED**

### **Part 2**

#### **Liability**

The Company shall indemnify the Assured against the legal liabilities, costs and expenses, which are incurred in respect of the Assureds activities as described under “Insured Business” and arising from events occurring during the Period of Insurance, and further as set out in Sections 1 to 11 below.

### **Section 1**

#### **Contractual Liability**

Contractual liability, exceeding the legal liability of the assured, is only covered if and to the extent that the terms of the contract have been approved in writing by the Insurer.

### **Section 2**

#### **Errors and Omissions**

The Company shall indemnify the Assured against the liability for a negligent act, error or omission and/or failure to perform the contractual obligations. Provided that the negligent act, error or omission and failure to perform the contractual obligations was not committed intentionally or recklessly and arising out of the Assureds activities as described under “Insured Business”.

### **Section 3**

#### **Cargo Liability**

#### **3.1**

The Company shall indemnify the Assured against:

#### **3.1.1**

The legal liability or approved liability under a contract for loss, shortage and damage to cargo under his possession or being handled and/or carried in relation to the Assureds activities as described under “Insured Business”.

#### **3.1.2**

The additional costs and expenses over and above those which would have been incurred by the Assured in any event under the contract of carriage, which have been incurred by the Assured in discharging or disposing of damaged or worthless cargo, but only if and to the extent that the Assured is unable to recover those costs from any other party.

#### **3.1.3**

The liabilities and additional costs incurred by the Assured, over and above the costs which would have been incurred by him if the cargo had been collected or removed, solely by reason of the total failure of a consignee to collect or remove cargo at the port of discharge or place of delivery, but only if and to the extent that such liabilities or costs exceed the proceeds of sale of the cargo and the Assured has no recourse to recover those liabilities or costs from any other party.

### **Section 4**

#### **Pollution**

The Company shall indemnify the Assured against the legal liability for pollution and or contamination of soil, air or water, if said pollution and/or contamination is the direct consequence of a sudden and accidental incident and when and to the extent that they are caused by or incurred in consequence of the Assureds activities as described under “Insured Business”.

Including:

The costs of any measures reasonably taken for the purpose of avoiding or minimizing pollution and or contamination together with any liability for loss of or damage to property caused by measures so taken.

### **Section 5**

#### **Injury, Loss of Live and Illness**



The Company shall indemnify the Assured against the liability to pay damages or compensation for personal injury, death or illness of any person, other than an employee, including hospital, medical or funeral expenses incurred in relation to such injury, death or illness.

## **Section 6**

### **Loss of or damage to property**

The Company shall indemnify the Assured against the liability to pay damages or compensation for any loss of or damage to any property whether on land or water and whether fixed or moveable.

## **Section 7**

### **Fines and Duty**

The Company shall indemnify the Assured against the liability for fines and/or duties imposed by any court, tribunal, or Authority of competent jurisdiction upon the Assured or upon any person for whom the Assured is legally liable to reimburse, for any of the following:

- 7.1 Short or over delivery of cargo or for failing to comply with regulations concerning declarations relating to goods or cargo;
- 7.2 In respect of pollution by oil or other substance;
- 7.3 Smuggling or any infringement of any customs law or regulation relating to the cargo;
- 7.4 any act, neglect or default, other than those specified above, of any servant or agent of the Assured in the course of their duties in respect of the Insured Activities

## **Section 8**

### **General Average**

The Company shall indemnify (without application of deductible) the Assured against the liability to pay the freight proportion of General Average, salvage and/or salvage charges.

## **Section 9**

### **Sue & Labour and Legal Costs**

The Company shall indemnify the Assured for costs and/or expenses reasonably incurred by the Assured with the intention of preventing or minimizing a loss for which the Company would have been liable under the terms and conditions of this policy, provided that such costs and/or expenses have been incurred with the Company's prior approval and the loss will be above the deductible.

## **Section 10**

### **Collection Costs**

The Company shall indemnify the Assured for reasonable costs, incurred with the Company's prior approval, relating to a debt owned to the assured, provided that the amount due to the insured are being withheld by a third party solely because of a claim for which the Company may be liable under the terms and conditions of the policy.

## **Section 11**

### **Interference by Government Authorities**

The Company shall indemnify the Assured for expenses incurred in defending or seeking redress where there has been interference with the operation of the Insured Activities by any lawful authority in any country which the Company shall, in its own discretion, decide is unwarranted and requires investigation.



### Part 3

## **EXCLUSIONS AND LIMITATIONS**

### Section 1

#### **General exclusions and limitations**

The policy excludes all liabilities, costs and expenses:

- 1.1 Arising out or connected with wilful and /or intentional wrongful acts of the management of the assured(s);
- 1.2 If the Assured has failed to promptly provide the Company or it's nominated representative with any information or documentation relating to any claim or dispute under this policy;
- 1.3 If the insured is held liable on account of a penalty, guarantee or other similar clause, except in the event that and in so far as liability would have existed even without such a clause;
- 1.4 If the claim or dispute is between joint assureds or between associated persons;
- 1.5 If the claim or dispute arose out of or consequent upon any actions in respect of illegal goods, contraband, blockade running or being employed in an unlawful trade or that an action was imprudent, unsafe, unduly hazardous or improper;
- 1.6 Arising from another activity and/or capacity, as mentioned under "Insured Business"
- 1.7 Which are covered under any other policy or would be covered under any other policy in case this insurance would not exist.
- 1.8 Arising from or caused by war and warlike operations, civil war, revolution, rebellion, insurrection, terrorist act (or act by any person acting from political or religious motive) or any weapons of war;
- 1.9 Arising from or caused by acts of violence committed in connection with strike, lock-out of workmen, labour disturbances, riots and local disturbances;
- 1.10 Arising from or caused by capture, seizure, arrest, restraint or detention (barratry and piracy excepted) and the consequences thereof or any attempt thereat;
- 1.11 Arising from or caused by any nuclear risks and/or any use of a chemical, biological, biochemical or electromagnetic weapon.
- 1.12 Arising from or caused by any continuous, intermittent or repeated exposure to or ingestion, inhalation or absorption of the following substances in any form or condition and whether directly or indirectly:
  - asbestos, tobacco, coal dust, polychlorinated biphenyls, silica, benzene, lead, talc, dioxin, pharmaceutical products or drugs of any type, pesticides or herbicides, human immune virus or acquired immune deficiency syndrome and/or electro magnetic fields;
- 1.13 Arising out of claims against the personal estate of directors and members of the supervisory board of the assured and former directors and members of the supervisory board of the assured in that capacity;



- 1.14 Arising from the making of agreements restricting competition, or of any other action of omission with a character of restricting competition;
- 1.15 Arising from infringement of patents and licenses;
- 1.16 Arising from or caused by slander or libel;
- 1.17 Caused by any property or equipment owned, leased, hired, occupied or rented by the Assured;
- 1.18 Arising from the Assured being the owner, operator and/or user of any vehicle(s) and/or conveyance(s) of any description required to be licensed under statutory provision(s) and/or regulations, and/or arising from or caused by a vehicle, chassis, trailer, conveyance and/or the like on public roads and/or outside the confines of the port and/or terminal;
- 1.19 Arising from any interest the Assured may have in any vessel, aircraft and/or helicopter whether owned, leased, rented, hired, chartered, or operated by the Assured, including any management and/or operation of any airport, area or building upon which aircraft and/or helicopter(s) land or manoeuvre, or which they are housed, maintained or repaired;
- 1.20 Directly caused by dredging operations
- 1.21 Arising from USA Law and Jurisdiction
- 1.22 Arising out or connected with Employers Liability

## **Section 2**

### **Special exclusions and limitations**

- 2.1 **Cargo Liability (part 2, section 3)**
  - 2.1.1 Notwithstanding the Period of Insurance and the Insured Activities hereunder there shall only be recovery from the Company under this Article if and only if the loss or damage is suffered or legal liability is incurred between the time of receipt for transport and completion of delivery at final destination.
  - 2.1.2 There shall be no recovery from the Company under this Article in respect of liabilities, costs or expenses:
    - A. arising from bill of lading, way bill or other document containing or evidencing the contract of carriage, issued with the knowledge of the Assured, or his agent with an incorrect description of the cargo or its quantity or its condition;
    - B. arising from the issue of a bill of lading or other document containing or evidencing the contract of carriage which contains any fraudulent misrepresentation, including but not limited to the issue of an ante-dated or post-dated bill of lading or other document;
    - C. in respect of bullion, precious or rare metals or stones, plate, jewellery or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments or specie, unless the Company has approved the carriage in writing.
    - D. arising as a result of or arising following a deviation from the contractually agreed voyage and if as a result of such a deviation the Assured is not entitled to rely on any defences or rights of limitation which would otherwise have been available to him to reduce or eliminate his liability. The Company may agree special



cover at terms to be agreed, if the deviation is reported before it occurs.

2.1.3 **Standard terms of carriage (by sea)**  
There shall be no recovery from the Company in respect of liabilities, costs and expenses, which would not have been incurred by the Assured if the cargo had been carried on terms no less favorable to the Assured than those laid down on the Company's recommended standard terms of carriage which shall be the Hague-Visby Rules. In particular, there shall be no recovery from the company in respect of liabilities arising under the Hamburg Rules, unless the Hamburg Rules are compulsorily applicable to the contract of carriage by operation of law.

2.1.4 **Standard terms of carriage (other than by sea)**  
There shall be no recovery from the Company in respect of liabilities, costs and expenses, which would not have been incurred by the Assured if the cargo had been carried on terms no less favorable to the Assured than those laid down on the Company's recommended standard terms of carriage which shall be a National and/or International Convention that is compulsory or statutorily applicable.

2.1.5 **Ad valorem cargo**  
Where the value of any cargo is declared upon the bill of lading or other document containing or evidencing the contract of carriage at a figure in excess of US\$ 2,500.- (or the equivalent in the currency in which the declared value is expressed) per unit, piece or package, the liability of the Company under this Section shall not exceed US\$ 2,500.- per unit, piece or package, unless the Company has agreed in writing to provide cover at a higher value.

## 2.2 **Pollution (part 2, section 4)**

2.2.1 There shall be no recovery from the Company under this article if the assured is also the owner of the cargo causing the pollution

2.2.2 Any Certificate of Insurance or confirmation of cover pursuant to this policy shall not be deemed to be evidence of financial responsibility under the Oil Pollution Act of 1990 or any similar federal or state law and may not be shown or tendered to the United States Coast Guard or any federal or state agency as evidence of financial responsibility or evidence of insurance. The Company does not consent to be a guarantor.

## 2.3 **Fines and Duty (part 2, section 7)**

There shall be no recovery from the Company under this article in respect of:

2.3.1 Overloading;

2.3.2 Entry of the vessel or other mean of transport into prohibited areas;

2.3.3 Disregarding of routing regulations;



**Part 4**

**DEFINITIONS**

Accident or occurrence	An event or happening or a series of events or happenings attributable to the same cause or resulting from continuous or repeated exposure to the same or similar conditions
Additional Insured	A party identified in the policy or in an endorsement to the policy and is insured under this policy to the same extent as the insured and subject to the same rights and obligations as the insured.
Aggregate Limit	The maximum amount payable to the insured during the period of the policy
Assured	The person or company insured under the Policy of insurance and who is stated to be the Assured in the Certificate of Insurance.
Authority	A duly constituted court, tribunal or authority of competent jurisdiction acting within its legal powers.
Cargo	Goods which are the subject of a contract of carriage and are to be, are, or were carried in connection with the Assured's Insured Activities.
Certificate of Insurance	The document issued by the Company stating the details of risks attached and which is evidence of the contract of insurance under the Policy of Insurance.
Co-Insured	see "Additional Insured"
Company	Amlin Corporate Insurance N.V.
Deductible	The proportion, percentage or the limited sum of money to be borne by the Assured in respect of any claim.
Haque Visby Rules	The International Convention for the Unification of Certain Rules Relating to Bills of Lading signed in Brussels on 25th August 1924, as amended by the Protocol to that Convention signed in Brussels on 23rd February 1968.
Illegal Trade	Handling, movement, storage of, or transaction in, people, goods, cargo or money in the course of trade which is prohibited by national law or international agreement or convention.
Person	A natural person, an incorporated or unincorporated body or a combination of both.
Policy of Insurance	The Multimodal – Ports & Logistics Conditions, consisting of the General Terms and Conditions, the Liability cover, and Exclusions and Limitations, together with those terms and conditions specified in the Certificate of Insurance.