

## **GENERAL CONDITIONS**

### **Clause 1 - General**

1. Unless expressly otherwise agreed upon in writing, these conditions shall apply to all offers, tenders, assignments and contracts, as well as to the execution of assignments by the adjuster/surveyor, as well as to anything that might arise as a result of or in connection with those offers and/or assignments.
2. If the principal refers to his own general conditions at the conclusion of the contract, the adjuster/surveyor rejects those conditions, except in the case where the adjuster/surveyor expressly declares in writing that it accepts those conditions.
3. Wherever the term "the principal" is used in these conditions, this term shall include all principals who have collectively given one assignment, as well as his or their authorized representatives.

### **Clause 2 - Assignment**

An assignment shall only relate to the matter specified in it; consequences for any other matter cannot be attached to it.

### **Clause 3 - Agreement of assignment /Contract**

1. The contract shall have been concluded only after the principal has received a written acknowledgement of the assignment from the adjuster/surveyor in which a specification is given of the object or loss incident in question, unless the principal himself has given an adequately clearly described assignment or acknowledgement in writing.
2. Alterations in the contract shall be binding only if they have been confirmed and/or agreed to in writing by the adjuster/surveyor.

### **Clause 4 - Obligations on the part of the adjuster / surveyor**

The adjuster/surveyor shall carry out the assignment accepted by it to the best of its knowledge and ability, accurately and impartially, as to be expected from an unbiased adjuster/surveyor and intermediary.

### **Clause 5 - Experts**

1. If and inasmuch as deemed necessary by the adjuster/surveyor for the proper execution of its assignment, they shall be entitled to obtain the assistance of one or more experts.
2. In case of need to select a third party, the adjuster/surveyor will consider the necessary carefulness. The adjuster/surveyor is not liable for any shortcoming of these third parties

and is entitled to accept a possible liability restriction by the third party to be engaged by the adjuster/surveyor, (also) on behalf of the principal, without prior consultation of the principal.

#### **Clause 6 - Confidentiality**

1. The adjuster/surveyor is bound to observe secrecy towards third parties in respect of all information brought to or having come to its knowledge in connection with the assignment, as well as in respect of the contents of its report to the principal; all this unless the proper execution of the assignment requires the appointment of one or more experts by the adjuster/surveyor.
2. If the adjuster/surveyor has appointed one or more experts, secrecy as referred to in paragraph 1 of this clause shall be imposed upon these expert(s) by the adjuster/surveyor.
3. The principal shall deal with all reports etc. received from the adjuster/surveyor strictly confidentially and shall not use these reports for any other purpose than they are meant for.

#### **Clause 7 - Conditions for the execution of an assignment**

The principal shall see to it that the assignment can take place under such conditions as rendered reasonably necessary by the nature of the assignment.

#### **Clause 8 - Information furnished by the principal**

1. Upon giving the assignment, or as soon as possible afterwards, the principal shall furnish the adjuster/surveyor with all data and information required for the proper execution of the assignment. If so required by the adjuster/surveyor the principal shall, in particular, furnish written information to the adjuster/surveyor in the manner specified by the adjuster/surveyor.
2. The adjuster/surveyor must be able to assume that the information received is correct and complete. If the adjuster/surveyor and/or the experts appointed by the adjuster/surveyor as referred to in clause 5 sustain damage and/or loss in consequence of incorrectness and/or incompleteness of that information, the principal shall be liable to indemnify the injured party/parties for that damage and/or loss.

#### **Clause 9 - Premature termination**

1. The adjuster/surveyor shall be entitled to terminate, for urgent reason of its own, the further execution of the already accepted assignment, without being bound to indemnify damage and/or loss possibly sustained by the principals in consequence of it, and under

production of a verbal or written — this at the option of the adjuster/surveyor — report to the principal about the activities already carried out.

2. The principal shall indemnify the adjuster/surveyor for the expenses already incurred and for the activities already carried out, with respect to which the stipulations of clause 13 shall apply.

#### **Clause 10 - Termination and annulment**

1. The adjuster/surveyor is entitled to terminate its activities at instant notice and to annul the not yet executed part of the contract by means of a written statement to the principal, without any judicial interposition being required, and without prejudice to its right to compensation of expenses, damage and/or loss and interest:
  - a. if the principal dies or is put in ward or, should the principal be a legal entity, if a resolution for dissolution is taken;
  - b. in case of attachment of whatever nature;
  - c. if the principal fails to meet any obligation incumbent on him by virtue of the law or of these conditions;
  - d. if the principal fails to pay an invoiced amount or part thereof within the prescribed time, or fails to meet one or more of his obligations towards the adjuster/surveyor;
  - e. if the principal proceeds to the cessation or conveyance of his business or an important part thereof, including the transfer of his business to a company to be formed, or if he changes the aims and objects of his business;
  - f. generally in all those cases where, after the conclusion of the contract, the adjuster/surveyor learns of circumstances which give it good grounds to fear that the principal will not meet his obligations.
2. If the principal meets, after all, his obligations towards the adjuster/surveyor after the occurrence of one or more of the aforementioned cases, for which reason the adjuster/surveyor has terminated its activities, the adjuster/surveyor shall be obliged only to report verbally or in writing — this at the option of the adjuster/surveyor — about the activities already carried out.
3. In the cases mentioned in paragraph 1 the adjuster/surveyor also has the right, at its option, to postpone the compliance with its obligations until the sum due, inclusive of any interest and expenses, has been received in full.

**Clause 11 - Report**

1. In conclusion of the execution of the assignment, the adjuster/surveyor shall submit a written report to the principal describing its findings unless otherwise agreed between parties.
2. Whenever this is deemed necessary by the adjuster/surveyor or agreed between parties, the adjuster/surveyor shall submit an interim report to the principal.

**Clause 12 - Termination and retention duty**

1. The activities of the adjuster/surveyor shall end (except in case of premature termination as described in clause 10) with the submission of the final report relating to the assignment accepted by the adjuster/surveyor unless otherwise agreed between the parties.
2. The adjuster/surveyor shall retain all data, correspondence, documents and such-like records that have a bearing on the acceptance and the execution of the assignment for a period of five years after the submission of the report; other material objects relating to the subject of the assignment shall not need to be retained by the adjuster/surveyor for more than twelve months after the submission of the report.

**Clause 13 - Payment**

1. Unless otherwise agreed in writing, payment shall be made, without any deductions, by deposit into or remittance to the (postal) bank account specified by the adjuster/surveyor within 30 days after the invoice date. The settlement date mentioned on the bank's statement of account is the determining one and shall thus be deemed to be the date of payment.
2. The adjuster/surveyor has the right to demand at all times advance payment, cash payment or security for the payment.
3. If the principal has not objected within 10 working days following the invoice date, the invoice will be considered to be accepted and acknowledged.
4. If one of the circumstances specified in clause 10 paragraph 1 occurs, the principal shall be legally in default by the mere occurrence of one of the aforementioned circumstances. In that case all debts due to the adjuster/surveyor by the principal shall mature immediately.

**Clause 14 - Interest and costs**

- DELETED -

### **Clause 15 - Liability**

1. The adjuster/surveyor shall never be liable towards the principal if the assignment complies with the provisions of clause 2 as well as clause 4; this subject to the further provisions of this clause and those of clause 16.
2. Except for liability on the part of the adjuster/surveyor by virtue of imperative legal stipulations and generally accepted rules of reasonableness and fairness, the adjuster/surveyor shall not be liable for, and thus never be bound to, indemnify mediate or immediate damage and/or loss of whatever nature, sustained directly or indirectly, including business interruption loss in respect of movable or immovable property, or by persons both at the principal's and third parties' in consequence of:
  - a. improper conditions, as referred to in clause 7, and incorrect and/or incomplete information, as referred to in clause 8;
  - b. incorrect and/or incomplete information as referred to in clause 8, more specifically where information asked for by the adjuster/surveyor is concerned, inasmuch as it has reasonably not been possible for the adjuster/surveyor to witness the circumstances in order to obtain the information in question;
  - c. any failure, restriction, or delay in the execution of the assignment, including the inability to complete the survey on the scheduled day, arising from any condition at the survey location (such as time restrictions or regulations) that differs from the information reasonably available to the adjuster/surveyor prior to the commencement of the survey, or due to the Principal's or any third party's failure to ensure the cargo is in a ready state for survey, notwithstanding any pre-survey confirmation made by the adjuster/surveyor;
  - d. activities not carried out by the adjuster/surveyor, inasmuch as it has in reason not been necessary for the adjuster/surveyor, by virtue of the provisions of clause 2 and of clause 4, to carry out those activities;
  - e. errors and/or delays resulting from the incorrect operation of equipment used by the adjuster/surveyor in the execution of its assignment, unless the principal proves satisfactorily that the adjuster/surveyor has been negligent in the care of that equipment.

This exclusion applies both if the incorrect operation referred to is due to the failure or malfunctioning of the power supply and/or other outside causes affecting the equipment, the prevention of which is not within the control of the adjuster/surveyor, and if it is due to defects to the equipment itself, including software;

- f. the non-completion or late completion of the report;

- g. the operations and activities of the experts appointed within the scope of clause 5 of these general conditions.
- 3. The adjuster/surveyor shall not be liable either for damage and/or loss caused to equipment and other objects placed at its disposal by or on behalf of the principal.
- 4. The principal shall protect the adjuster/surveyor against claims from third parties in respect of damage to equipment and other objects placed at its disposal by or on behalf of the principal for the execution of the activities by the adjuster/surveyor, as well as in respect of damage and/or loss to objects to be inspected.
- 5. The adjuster/surveyor shall never be liable for indirect damage and/or loss.

**Clause 16 - Limitation of liability and time bar**

- 1. Any liability on the part of the adjuster/surveyor relating to the matter in question shall in all cases be limited to the amount payable by the professional liability insurers of the adjuster/surveyor.  
Any concurrence of assignments shall in this connection be deemed to be one single case.
- 2. Any claims against the adjuster/surveyor shall be barred by limitation one year after the date of submission of the report to the principal.

**Clause 17 - Indemnity**

The principal shall indemnify the adjuster/surveyor against all claims of third parties, both in respect of the execution of the assignment and in respect of the report issued by the adjuster/surveyor.

**Clause 18 - Applicable law and disputes**

- 1. All offers, tenders, assignments and contracts, as well as the execution of assignments by the adjuster/surveyor, shall be governed by Japanese law.
- 2. All disputes, both of factual and of legal nature, arising out of or connected with the contract to which these conditions apply, including disputes that are deemed to be disputes by only one of the parties, shall be resolved by arbitration in accordance with the The Rules of Arbitration of TOMAC of The Japan Shipping Exchange, Inc. The place of the arbitration shall be Tokyo, Japan.
- 3. This arbitration clause does not eliminate the right of parties to apply, in cases of urgency, to the president-judge of the district court for summary proceedings, in which connection the only competent president-judge is the one of the district court having jurisdiction over the area where the adjuster/surveyor in question is established, and to proceed to obtaining a garnishee order and the ways to maintain same.

4. This arbitration clause does not eliminate either the right of the adjuster/surveyor to apply to the competent civil judge demanding payment of an invoice and the interest and collecting charges related with it, in case the term of payment of an invoice in accordance with clauses 13 and 14 is exceeded, in which connection the only competent civil judge is the one of the court of civil judicature having jurisdiction over the area where the adjuster/surveyor in question is established, inasmuch as the legal provisions admit of this.
5. The right of the adjuster/surveyor to bring the dispute before the president-judge of the district court of the civil judge who is competent in accordance with the normal competence regulations, is left intact by the provisions of paragraphs 4 and 5 of this clause.

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