

AMERICAN INSTITUTE CARGO CLAUSES 2004
FREE OF PARTICULAR AVERAGE- AMERICAN CONDITIONS (FPAAC)

- 1. FPA AVERAGE TERMS** Unless broader coverage is provided elsewhere herein or endorsed hereon, the following Institute FPA Warranties shall apply:
- Vessel* A. Warranted Free from Particular Average unless caused by the vessel or craft being stranded, sunk, or burnt, but notwithstanding this Warranty the Company is to pay any physical loss of or damage to the insured property which may reasonably be attributed to fire, due to collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at a port of distress.
- “On Deck” Vessel* B. Insured property shipped on deck subject to an “On Deck” bill of lading is warranted free from Particular Average unless caused by the vessel being stranded, sunk, burnt, on fire or in a collision; or by jettison or washing overboard, or by loss overboard of overseas containers stowed on deck whether subject to an “On Deck” bill of lading or not.
- Aircraft* C. Warranted Free from Particular Average unless caused by the aircraft suffering an accident in takeoff or landing, or coming to earth at a place other than an airfield, or in a collision with another aircraft; or being on fire or by jettison.
- 2. CAUSES OF LOSS** Touching the adventures and perils which the Company is contented to bear, and take upon itself, they are of the seas, fires, assailing thieves, jettisons, loss overboard of overseas containers while stowed on deck, barratry of the master and mariners, and all other like perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the insured property.
- Basic Perils*
- In respect to shipments via aircraft, the words, “seas” and “barratry of the master and mariners” shall be read as “air” and “breaches of trust by the air crew,” respectively.
- 3. ADDITIONAL PERILS** This policy shall also cover:
- Shore Perils* A. Where this insurance covers property while on shore, including during land transportation, the risks of collision, derailment, overturn or other accident to the conveyance, fire, lightning, sprinkler leakage, cyclones, hurricanes, earthquakes, floods (meaning the rising of navigable waters) and collapse or subsidence of docks or wharves.
- Packages Totally Lost* B. Any package, or packages, totally lost in loading, transshipment or discharge.
- Inchmaree* C. Physical loss of or damage to the insured property caused by:
- Explosion* (1) The bursting of boilers, breakage of shafts or through any latent defect in the machinery, hull or appurtenances, or from faults or errors in the navigation or management of the Vessel (within the meaning of Section 3 of the Harter Act, 1893) by the Master, Mariners, Mates, Engineers or Pilots.
- Pollution Damage/* (2) Explosion, howsoever or wheresoever occurring.
- Deliberate Damage* (3) Governmental authorities acting for the public welfare to prevent or mitigate a pollution hazard or threat thereof, provided that the accident or occurrence creating the situation which required such governmental action would have resulted in a recoverable claim under this policy if the insured property would have sustained physical loss or damage as a direct result of such accident or occurrence. The coverage provided by this sub-part (3) shall only apply when the insured property is on board a waterborne conveyance.

4. ADDITIONAL COVERAGES

General Average & Salvage Charges

Landing, Warehouse & Forwarding Charges

Brands & Trademarks

“Both to Blame”

Sue & Labor Charges

Craft/Lighter Charges

This policy shall also cover the following contributions and/or expenses:

A. General Average contribution and Salvage Charges determined to be due from or in respect to insured property.

B. Landing, warehousing, forwarding and special charges incurred by reason of perils insured against.

C. Expenses to remove Brands and Trademarks pursuant to the Brands and Trademarks provisions of the Loss Adjustment Clauses.

D. Where insured property is shipped under a Bill of Lading containing the so-called “Both to Blame Collision” Clause the Company agrees as to all losses covered by this insurance, to indemnify the Assured for this policy’s proportion of any amount (not exceeding the amount insured) which the Assured may be legally bound to pay to the shipowners under such clause. In the event that such liability is asserted the Assured agrees to notify the Company as promptly as possible and the Company shall have the right, at its own cost and expense, to defend the Assured against such claim.

E. Charges reasonably incurred pursuant to the duty set forth below, whether said efforts are successful or not:

In the event of loss or misfortune, it is the duty of the Assured and any assignee of the Assured’s rights hereunder to take all reasonable measures to avert or minimize loss insured against by this policy and to ensure that all rights against third parties are preserved and exercised.

The Company shall be liable in full for the charges incurred under this Clause whether the combined amount of physical loss or damage and Sue and Labor Charges exceeded the applicable policy limit or not.

F. Including transit by craft, raft or lighter to or from the vessel. Each craft, raft or lighter to be deemed a separate insurance. The Assured are not to be prejudiced by any agreement exempting lightermen from liability.

5. EXCLUSIONS

The following exclusions shall apply unless modified or superseded elsewhere herein or endorsed hereon:

Basic Exclusions

A. This policy does not cover:

(1) Ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear.

(2) Loss, damage, or expense:

(a) Attributable to willful misconduct of the Assured;

(b) caused by inherent vice or nature of the insured property;

(c) arising from insolvency or financial default of the owners, managers, charterers, or operators of the vessel;

(d) resulting from insufficiency or unsuitability of packing or preparation of the insured property for the intended voyage. For the purposes of this clause, “packing” shall be deemed to include stowage into an overseas container but only when such stowage is carried out prior to the commencement of the insured voyage or when performed by the Assured or his representative.

6. PARAMOUNT WARRANTIES

Subject to the following Paramount Warranties which shall not be modified or superseded by any other provisions included herein or stamped or endorsed hereon unless such other provision refers specifically to the risks excluded by these Warranties and expressly assumes the said risks:

F.C. & S. Warranty

A. Notwithstanding anything herein contained to the contrary, this insurance is warranted free from:

- (1) all consequences of capture, seizure, arrest, restraint, detainment, confiscation, preemption, requisition, nationalization, and the consequences thereof or any attempt thereat, whether in time of peace or war and whether lawful or otherwise;
- (2) all loss or damage or expense, whether in time of peace or war, caused by:
 - (a) any weapon of war employing atomic or nuclear fission and/or fusion and/or reaction or radioactive force or matter or
 - (b) any mine or torpedo;
- (3) all consequences of hostilities or warlike operations (whether there be a declaration of war or not), but this Warranty shall not exclude collision or contact with rockets or similar missiles (other than weapons of war) or with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather, fire or explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power, and for the purposes of this Warranty "power" includes any authority maintaining naval, military, or air forces in association with a power;
- (4) all consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or from the consequences of the imposition of martial law, military or usurped power, or piracy.

S.R. & C.C. Warranty

- B. Warranted free from loss, damage, or expense caused by or resulting from:
- (1) strikes, lockouts, labor disturbances, riots, civil commotions, or the acts of any person or persons, taking part in any such occurrences or disorders;
 - (2) vandalism, sabotage, or malicious act, which shall be deemed also to encompass the act or acts of one or more persons, whether or not agents of a sovereign power, carried out for political, terroristic or ideological purposes and whether any loss, damage or expense resulting therefrom is accidental or intentional.

Delay Warranty

- C. Warranted free of claim for loss of market or for loss, damage, expense or deterioration arising from delay, whether caused by a peril insured against or otherwise.

Nuclear/Radioactive Contamination Exclusion Warranty

- D. Warranted that this policy shall not apply to any loss, damage or expenses due to or arising out of, whether directly or indirectly, nuclear reaction, radiation or radioactive contamination, regardless of how it was caused. However, subject to all provisions of this policy, if this policy insures against fire, then direct physical damage to the insured property located within the United States or any territory of the United States or Puerto Rico by fire directly caused by the above excluded perils, is insured, provided that the nuclear reaction, radiation, or radioactive contamination was not caused, whether directly or indirectly, by any of the perils excluded by the F.C. & S. Warranty of this policy. Nothing in this clause shall be construed to cover any loss, damage or expense caused by nuclear reaction, radiation or radioactive contamination arising directly or indirectly from the fire mentioned above.

7. ADDITIONAL CONDITIONS

Seaworthiness

The following additional clauses shall also apply:

- A. The seaworthiness of the vessel operating as a common carrier is hereby admitted as between the Assured and the Company and the wrongful act or misconduct of the shipowner or his servants causing a loss is not to defeat the recovery by an innocent Assured if the loss in the absence of such wrongful act or misconduct would have been a loss recoverable on this policy. With leave to sail with or without pilots, and to tow and assist vessels or craft in all situations, and to be towed. The Assured is not to be prejudiced by the presence of the negligence clause and/or latent defect clause in the Bill(s) of Lading and/or Charter Party.

Carrier Clause

- B. Warranted that this insurance shall not inure, directly or indirectly, to the benefit of any carrier or bailee.

Economic & Trade Sanctions

- C. Whenever coverage provided by this policy would be in violation of any U.S. economic or trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), such coverage shall be null and void.

Similarly, any coverage relating to or referred to in any certificates or other evidences of insurance or any claim that would be in violation of U.S. economic or trade sanctions as described above shall also be null and void.

8. DURATION OF RISK The following conditions apply regarding the duration of risk:

Transit Clause

- A. (1) This insurance attaches from the time the insured property leaves the warehouse, or is delivered alongside or on board the overseas conveyance in accordance with the obligation of the Assured under the terms of sale, for the commencement of transit and continues until:
- (a) insured property is delivered to the Consignee's or other final warehouse or place of storage at the intended destination; or
 - (b) the insured property is delivered to any other warehouse or place of storage, whether prior to or at the intended destination, which the Assured (including any shipper, assignee, consignee or claimant that has control of the insured property at the relevant time) elects to use either:
 - (i) for storage other than in the ordinary course of transit; or
 - (ii) for allocation or distribution; or
 - (c) the expiring of 60 days (30 days on air shipments) after completion of discharge from the overseas vessel (or aircraft), whichever shall first occur. In the event of delay in excess of the limits specified in (c) above arising from circumstances beyond the control of the Assured, held covered at a premium to be named for an additional 30 days provided the Assured gives notice thereof to the Company as promptly as possible but in any event prior to the expiry of the original 60 days (30 days on air shipments) period.
- (2) (a) This insurance specially to cover the insured property during deviation, delay, forced discharge, re-shipment, transshipment and any other variation of the adventure arising from the exercise of a liberty granted to the shipowner or charterer under the contract of affreightment.
- (b) In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the original insured destination, this insurance continues until the insured property is sold and delivered at such port or place; or, if the insured property be not sold but is forwarded to the original insured destination or to any other destination this insurance continues until the insured property has been sold and delivered to the warehouse or place of storage as provided in section 1.
- (3) If while this insurance is still in force and before the expiry of 15 days from midnight on the day on which the discharge overseas of the insured property from the overseas vessel at the final port of discharge is completed, the insured property is re-sold (not being a sale within the terms of Section 2(b)) and is to be forwarded to a destination other than that covered by this insurance, the insured property is covered hereunder while deposited at such port of discharge until again in transit or until expiry of the aforementioned 15 days whichever shall first occur. If a sale is effected after the expiry of the aforementioned 15 days while this insurance is still in force the protection afforded hereunder shall cease as from the time of the sale.
- (4) Held covered at a premium to be named in case of change of voyage or of any omission or error in the description of the interest, vessel or voyage.
- (5) It is a condition of this insurance that there shall be no interruption or suspension of transit unless due to circumstances beyond the control of the Assured, Assignee, Consignee or Claimant and the Assured, Assignee, Consignee or Claimant shall act with reasonable dispatch in all circumstances within their control.
- (6) It is agreed that insured property taken out of transit upon instructions of surveyors appointed by or on behalf of the Company for the purpose of establishment of loss or damage, shall be held covered, subject to the original terms and conditions applying to such shipment, without payment of additional premium or advice to the Company, during such interruption or suspension of transit until disposed of by delivery to and acceptance by the original Consignee or by sale to others or otherwise, provided that during such interruption or suspension of transit the Assured complies with the surveyors' instructions.

*Shipments
Returned or Refused*

B. In the event of refusal or inability of the Assured, or Consignee, to accept delivery of insured property, this policy is extended to cover such insured property, subject to the original insuring terms, during delay and/or return or until otherwise disposed of, provided the Assured reports the facts of such situations to the Company as soon as they have knowledge of such an occurrence and pays additional premium if required.

*Consolidation/
Deconsolidation*

C. This policy is extended to cover the insured property temporarily stopped in transit for the purpose of consolidation or deconsolidation in or from overseas containers for not exceeding 30 days whether the said stoppage in transit is within the control of the Assured or not. Held covered at an additional premium to be named for an additional 30 days provided the Assured gives notice thereof to the Company as promptly as possible but in any event prior to the expiry of the original 30 day period.

**9. LOSS ADJUSTMENT
CLAUSES**

The following loss adjustment clauses shall apply:

Constructive Total Loss

A. No recovery for a Constructive Total Loss shall be paid hereunder unless the insured property is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it cannot be preserved from actual total loss without an expenditure which would exceed its value if the expenditure had been incurred.

Partial Loss

B. In case of partial loss or damage insured against by this policy, a separation of sound and damaged insured property shall be made and the amount of loss determined by:
(1) an agreed percentage of depreciation, in which event the Assured shall receive such percentage of the insured value of the damaged insured property, or, if there is no agreement;
(2) sale of the damaged insured property, in which event the Assured shall receive the difference between the insured value of the damaged insured property sold and the proceeds of sale.

*General Average &
Salvage Charges*

C. General Average contributions and Salvage Charges shall be payable according to United States laws and usage and/or as per foreign statement and/or as per York Antwerp Rules (as prescribed in whole or in part) if in accordance with the Contract of Affreightment.

Machinery Clause

D. When the insured property includes a machine consisting when complete for sale or use of several parts, then, in case of loss or damage covered by this insurance to any part of such machine, the Company shall be liable only for the proportion of the insured value of the part lost or damaged, or at the Assured's option, for the cost and expense, including labor and forwarding charges, of replacing or repairing the lost or damaged part, excluding loss, if any, sustained by payment of additional duty unless the full duty is included in the amount insured; but in no event shall the Company be liable for more than the insured value of the complete machine.

Labels Clause

E. In case of damage affecting labels, capsules, or wrappers, the Company, if liable therefor under the terms of this policy, shall not be liable for more than an amount sufficient to pay the cost of replacing the labels, capsules or wrappers and the cost of reconditioning the insured property, but in no event shall the Company be liable for more than the insured value of the damaged insured property.

Brands & Trademarks

F. In case of damage by a peril insured against to insured property bearing a brand or trademark associated with the Assured, the damage value shall be ascertained after removal of such markings. Where removal is impracticable, the Company and the Assured shall consult as to how the loss may best be minimized; however, the Assured shall have the option of destroying the damaged insured property upon payment to the Company of the value which could have been realized by the sale of the insured property in its damaged condition.

Subrogation

G. It is a condition of this insurance that upon payment of any loss the Company shall be subrogated to all rights of the Assured against third parties with respect to such loss. It is a further condition of this insurance that if the Assured or any Claimant impairs or diminishes the rights to which the Company would be subrogated upon payment, the Company may deduct from such payment a sum equal to the estimated recovery lost by reason of the Assured's or Claimant's action or inaction.

Notice of Loss

H. It is a condition of the Company's liability that the Assured, Assignee, Consignee or Claimant promptly report any loss or damage which may give rise to a claim hereunder. Notice may be given to any office of the Company or to the Company's claim or survey representative near the place where the insured property is or was destined. If no claim or survey representative of the Company is at or near such place, notice may be given to the nearest representative of the American Institute of Marine Underwriters, or if no such representative is available, to the nearest Lloyd's agent.

Payment of Loss

I. In case of loss, such loss to be paid no later than thirty days after satisfactory proof of loss and satisfactory proof of interest in the insured property has been established by the Company (the amount of the premium, if unpaid, being first deducted). Proofs of loss to be submitted to the representative of the Company, if there be one at the place such proofs are taken. If there be no such representative the correspondent of the American Institute of Marine Underwriters may authenticate said proofs or in the absence of such correspondent, the nearest Lloyd's agent. Where such proofs have been established by the Company and the final amount of loss cannot be determined within said 30 days, the Company may advance an amount, to be agreed upon, pending final adjustment of the claim. Any amount advanced in excess of the final claim amount to be refunded to the Company by the Assured.

Notice of Suit

J. No suit or action on this policy shall be sustainable in any Court of Law or Equity unless the Assured shall have complied in full with all the terms and conditions of this insurance, nor unless same shall be commenced within twelve (12) months after the loss, provided that where such limitation of time is prohibited by the laws of the State wherein this policy is issued, then no such suit or action shall be sustainable unless commenced within the shortest limitation of time permitted by the laws of such State.

Choice of Law

K. It is agreed that this policy and its endorsement(s) is a contract of marine insurance protecting against marine risks and has been applied for, priced and underwritten as such, and the law applicable to any interpretation of this policy and the rights and obligations of the Company and the Assured hereunder shall be US federal maritime common law or, in the absence of US federal maritime common law, the law of the state of New York, irrespective of any principles of choice of law.

10. OPERATING CLAUSES

The following operating clauses shall apply:

Reports of Shipments

A. It is a condition of this insurance that the Assured report to the Company all shipments of insured property or other insured interests coming within the terms hereof within thirty days after the end of the month in which all details of insured shipments or other insured interests become known to the Assured, unless otherwise agreed. Premium for all reported shipments or other insured interests shall be paid by the Assured at rates as agreed. The Company, however, being entitled to all premium as agreed whether interests have been reported or not. Willful failure to make such reports shall render this policy voidable at the Company's option as of the date it would have attached to the unreported shipment or other insured interest. However, unintentional error or omission or delay in making any such report shall not void this insurance provided the same be reported to the Company as soon as known to the Assured.

Inspections of Records

B. The Company or a person appointed by the Company may examine the books and records of the Assured as far as they relate to the subject matter of this insurance at any time while this insurance is in force and for twelve months after termination.

Special Cargo Policies

C. When the Company supplies Special Cargo Policies or Certificates to the Assured, such action authorizes the Assured to utilize such Special Cargo Policies or Certificates to provide evidence of insurance to third parties, subject to the following restrictions:

- (1) Special Cargo Policies or Certificates may be used only in connection with shipments to which this Open Policy attaches.
- (2) Terms, conditions, and values entered upon a Special Cargo Policy or Certificate by the Assured must conform to Open Policy terms applicable to the shipment for which the Special Cargo Policy or Certificate is utilized unless the Company's written agreement to other terms is obtained.
- (3) Copies of all Special Cargo Policies or Certificates utilized by the Assured must be sent to the Company promptly upon issuance.
- (4) In the event a Special Cargo Policy or Certificate is spoiled or voided, the original and any duplicate are to be returned to the Company.

By utilizing a Special Cargo Policy or Certificate, the Assured agrees to reimburse the Company, if by reason of any omission or insertions made by the Assured or their authorized representative upon such Special Cargo Policy or Certificate, the Company is obligated to pay a claim not covered by this policy or an amount in excess of what this policy undertakes to pay.

Other Insurance

D. As respects each shipment or other insured interest:

- (1) This insurance shall be deemed void to the extent of any insurance procured by any carrier or other bailee which is available to the beneficiary hereof or will be so available if this insurance is voided.
- (2) If the Assured or others (excepting any carrier or other bailee) shall have procured other ocean marine insurance attaching earlier than the attachment hereunder, then this insurance shall be liable only to the extent of any deficiency in such prior insurance as compared to the insured value hereunder.
- (3) If the Assured or others (excepting any carrier or other bailee) shall have procured other ocean marine insurance attaching later than the attachment hereunder, then this insurance shall be liable up to the insured value hereunder without any claim to contribution.
- (4) If the Assured or others (excepting any carrier or other bailee) shall have procured other ocean marine insurance attaching simultaneous with insurance hereunder, then this insurance shall be liable, only for the pro rata share of any claim that the insured value hereunder bears to the total amount available from all insurance.
- (5) If the Company is relieved of any liability by the operation of this clause it shall, nevertheless, retain all premium. In consideration of such premium the Company guarantees prompt payment of claims covered by this insurance. The Company further insures against any difference in conditions which make the other insurance less favorable to the Assured than insurance hereunder.