

### Coverage provided by Marine Cargo Policy

A standard marine cargo policy provides coverage to cargo in transit from warehouse to warehouse, during transit by ship, aircraft, land conveyance or by courier service for physical loss of or damage to the insured cargo caused by insured perils.

The most commonly used clauses in the Hong Kong market are Institute Cargo Clauses (A) / (Air) / (B) / (C) 1/1/82, the Institute Cargo Clauses (A) or (Air) 1/1/82 is basically an All Risks cover for the goods in transit with certain exclusions as specified in the Exclusion Clause, the Institute Cargo Clauses (A) 1/1/82 is used for transits by ship while the Institute Cargo Clauses (Air) 1/1/82 is used for transits by aircraft.

In addition, Institute Cargo Clauses (A) / (B) / (C) 1/1/82 also provide coverage for General Average and Salvage Charges adjusted or determined under the contract of affreightment, and proportional liability that the cargo owner has to responsible under the “Both to Blame Collision” Clause of the contract of affreightment.

An all risks policies may not be provided in some circumstances; so restrictive cover such as Institute Cargo Clauses (B) or (C) 1/1/82 will be provided. Below is a brief cover comparison of the (A), (B) and (C) clauses.

#### Coverage comparison

Institute Cargo Clauses	A	B	C
Proximate causes			
1 Stranding, Grounding, Sinking or Capsizing	√	√	√
2 Overturning or Derailment of Land Conveyance	√	√	√
3 Collision of ship, craft with another ship or craft	√	√	√
4 Contact of Ship, Craft or Conveyance with anything other than Ship or Craft (excludes water but includes ice)	√	√	√
5 Discharge of Cargo at Port of Distress	√	√	√
6 Fire or Explosion	√	√	√
7 Earthquake, Volcanic Eruption or Lighting	√	√	X
8 General Average and Salvage Charges	√	√	√
9 Jettison	√	√	√
10 Washing Overboard (Deck cargo)	√	√	X
11 Malicious Damage	√	X	X
12 Theft, Pilferage or Robbery	√	X	X
13 Non-delivery of entire shipping package	√	X	X
14 Piracy	√	X	X
15 Entry of Sea Water into the Ship, Craft, Hold, Conveyance Container, Liftvan or Place of Storage	√	√	X
16 Entry of River or Lake water into the same	√	√	X
17 Rain Water	√	X	X
18 Loss or damage during loading/discharge from vessel	√	X	X
19 Loss overboard during loading/discharge from vessel (total loss only)	√	√	X
20 Other physical loss or damage not specified and not excluded.	√	X	X
21 Expenses incurred to minimize loss or damage	√	√	√

#### Exclusions under the Institute Cargo Clauses

- 1 Wilful misconduct of the Assured

- 2 Ordinary leakage or loss in weight or volume
- 3 Ordinary wear and tear
- 4 Insufficient or unsuitable packing arrangements
- 5 Inherent vice or nature of the subject-matter insured
- 6 Delay
- 7 Insolvency of ship owners or charterers
- 8 Use of nuclear or atomic weapons
- 9 Unseaworthiness of vessels/crafts or containers
- 10 War risk
- 11 Strike and terrorism risks
- 12 Deliberate damage/destruction of subject-matter insured by wrongful act of any person (under ICC (B) & (C) only)

Duration of Institute Cargo Clauses (A) / (B) / (C) 1/1/82

Cover attaches from the time goods leaves the warehouse/place of storage for commencement of transit, continues during ordinary course of transit and terminates either:

- on delivery to Consignee's/final warehouse, or
- on delivery to other warehouse/place of storage for
  - for storage other than in the ordinary course of transit or
  - for allocation or distribution
- on the expiry of 60 days after completion of discharge from oversea vessel at the final port of discharge

WHICHEVER SHALL FIRST OCCUR

However, if Assured decided to change the voyage of the shipment or forward the shipment to other destination(s) other than the place specified in the insurance policy before the insured cargo is delivered to the Consignee or final warehouse, you are recommended to contact your Insurance Company/Broker/Agent for necessary extension or arrangement.

Full clause wording of Institute Cargo Clauses can be provided by the Company for client's reference, you may contact your account handler for clause wording and explanation, we could tailor made a cover to suit your needs and would be pleased to tender our professional advice regarding insurance arrangement.

Some commonly used Institute Cargo Clauses are available at Google search.

After using the same set of Institute Cargo Clauses for more than two centuries, the Joint Cargo Committee in London revised some commonly used clauses to suit with existing trade practice and needs of cargo owners, they have made some minor changes in the terminology used to make it easy to understand by a layman.

For easy understanding, we have summarized the differences between the Institute Cargo Clauses (A) 1982 version and the 2009 version regarding benefit of Insured as below:

Under the Exclusion clauses 4, 5, 6 & 7, Insurer has waived the exclusions under certain circumstances and made the wording more understandable. As in clause 4.3, “life-van” in the 1982 version has been deleted and “servant” in the 1982 version has been replaced by “employee”. It also clearly defined in the wording that independent contractors are not considered as employees of Assured.

Under Exclusion clause 4.6 of 2009 version, exclusion for insolvency or financial default of ship owners or charterers only apply if the Assured are aware, or in the ordinary course of business should be aware of such insolvency or financial default could prevent the normal prosecution of the voyage. However, this exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

Under Exclusion clause 4.7 of 2009 version, the scope of this exclusion has been widen to include loss, damage or expense directly or indirectly caused by or arising from the use of “any weapon or device” employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

Under Exclusion clause 5 of 2009 version, the scope of exclusion is narrowed. Exclusion for unseaworthiness of vessel/craft and unfitness of container/conveyance applies if:

- 5.1.1 the Assured is privy of the unseaworthiness or unfitness of vessel or craft at the time of loading;
- 5.1.2 the container or conveyance is unfit for the safe carriage of the goods and
  - (i) the loading is carried out prior to attachment or
  - (ii) the loading is carried out by the Assured or their employees and they are privy to that unfitness.

Insurers will waive the exclusion 5.1.1 if the contract of insurance has been assigned to an innocent party who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

Under Exclusion clause 7, terrorism exclusion has been extended to reflect the wide range of threats we may encounter and possible motives behind an attack. Clause 7.3 of 1982 clauses has been revised to 7.3 and 7.4 as below in the 2009 version:

This insurance excludes loss, damage or expense

7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

7.4 caused by any person acting from a political, ideological or religious motive.

The duration clause of the 2009 version has been widened to include the process of loading and unloading and cover attaches from the first move in the storage warehouse and terminates when the unloading is completed at the final warehouse or place of storage at destination. Clause wording of Transit Clause has been revised as below:

## DURATION

### Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit, continues during the ordinary course of transit and terminates either

8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

8.1.4 on the expiry of 60 days after completion of discharge overseaside of the subject-matter insured from the overseas vessel at the final port of discharge,

whichever shall first occur.

8.2 If, after discharge overseaside from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

- 8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

Contents of the "Termination of Contract of Carriage" clause is basically the same just changed the term "delivery" to "unloading" and "destination named herein" to "destination named in the contract of insurance" under clause 9.2. Termination of Contract of Carriage in the 2009 clause is revised as below:

#### Termination of Contract of Carriage

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers, either
- 9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur, or
- 9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of clause 8 above.

Under the "Change of Voyage" clause under the 2009 clause, the term "held covered" is not used to avoid misunderstanding and a new sub-section 10.2 has been inserted to ensure that an innocent Assured would not lose coverage because of change of voyage beyond his knowledge. Below is the revised wording under the 2009 clause:

#### Change of Voyage

10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.
- 10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

No major changes under other sub-sections of the Institute Cargo Clauses (A), except “servants” replaced by “employee”, “Underwriters” replaced by “Insurers” and “inure” is replaced by plain English wording.

Full clause wording of Institute Cargo Clauses can be provided by the Company for client’s reference, you may contact your account handler for clause wording and explanation, we could tailor made a cover to suit your needs and would be pleased to tender our professional advice regarding insurance arrangement.

Some commonly used Institute Cargo Clauses are available at Google search.