

### Enhancement under 2009 version

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 existing trade practice and the needs of cargo owners. Some minor changes in the terminology have been made to make coverage easier to understand. We have summarized the key differences between the Institute Cargo Clauses (A) 1982 version, and the 2009 version, below:

Under Exclusion clauses 4, 5, 6 & 7, the Insurer waives the exclusions under certain circumstances, and has simplified the policy wording. In clause 4.3 of the 1982 version, the words "Lift van" have been deleted. Additionally "servant" has been replaced by the term "employee". The new wording also makes clear that independent contractors are not considered employees of the Assured.

Under Exclusion clause 4.6 of the 2009 version exclusion for the insolvency or financial default of ship owners or charterers shall only apply if the Assured are aware or in the ordinary course of business, should be aware that 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 widened 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. The Transit Clause wording 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 overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.
- 8.2 If, after discharge overseas 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 wording of Institute Cargo Clauses can be provided by MSIG for your reference. If you have any particular needs that are unique to your business, we are able to tailor-make coverage to suit your needs or you may contact your account handler for professional advice.

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