

**Form #TLELC-PAC (June 15, 2005)**  
**Canadian (Pacific) Total Loss and Excess Liabilities Clauses**

1	1. Touching the Adventures and Perils which we, the Underwriters, are contented to	86
2	bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers,	87
3	Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests,	88
4	Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition	89
5	or quality soever, Barratry of the Master and Mariners and of all other like Perils,	90
6	Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the	91
7	subject matter insured (hereafter the "Vessel") or any part thereof; excepting, however,	92
8	such of the foregoing Perils as may be excluded by provisions elsewhere in these	93
9	clauses or by endorsement.	94
10	2. It is the duty of the Assured, their servants, agents or assigns, in case of loss or	95
11	misfortune to take such measures as may be reasonable for the purpose of averting or	96
12	minimising a loss which would be recoverable under this insurance. For the purpose of	97
13	this insurance, such measures shall be designated as Sue and Labour.	98
14	The reasonable charges therefor will be reimbursed by Underwriters in accordance	99
15	with their rateable proportion as provided for herein.	100
16	It is expressly agreed that no acts of Underwriters or the Assured in recovering,	
17	saving or preserving the Vessel shall be considered as either a waiver or acceptance of	
18	abandonment or otherwise prejudice the rights of either party.	
19	3. THIS INSURANCE COVERS ONLY ACTUAL OR CONSTRUCTIVE TOTAL	
20	LOSS OF THE VESSEL:	
21	(a) Caused by the perils enumerated in clause I hereof.	
22	(b) Directly caused by:	
23	(i) Accidents in loading, discharging or shifting cargo or fuel	
24	Explosions on shipboard or elsewhere	
25	Breakdown of or accident to nuclear installations or reactors on	
26	shipboard or elsewhere	
27	Bursting of boilers, breakage of shafts or any latent defect in the	
28	machinery or hull	
29	Negligence of Master, Charterers other than an Assured, Officers,	
30	Crew or Pilots	
31	Negligence of repairers provided such repairers are not Assured(s)	
32	hereunder, but this exclusion shall not apply to loss or damage resulting	
33	from the operation by the Assured of a commercial repair division or	
34	facility	
35	(ii) Contact with aircraft or similar objects, or objects falling therefrom	
36	Contact with any land conveyance, dock or harbour equipment or	
37	installation	
38	Earthquake, volcanic eruption or lightning	
39	Provided such loss or damage has not resulted from want of due diligence by	
40	the Assured, Owners or Managers.	
41	Masters, Officers, Crew or Pilots not to be considered as part Owners	
42	within the meaning of this Clause 3(b) should they hold shares in the	
43	Vessel.	
44	(c) Directly caused by any governmental authority acting under the powers	
45	vested in them to prevent or mitigate a pollution hazard, or threat thereof,	
46	resulting directly from the damage to the Vessel for which the Underwriters	
47	are liable under this insurance, provided such act of governmental authority	
48	has not resulted from want of due diligence by the Assured, the Owners or	
49	Managers of the Vessel or any of them to prevent or mitigate such hazard or	
50	threat. Masters, Officers, Crew or Pilots not to be considered Owners	
51	within the meaning of this clause 3(c) should they hold shares in the Vessel.	
52	(d) Caused by strikers, locked-out workmen or persons taking part in labour	
53	disturbances, riots or civil commotions; also destruction of or damage to the	
54	Vessel caused by persons acting maliciously.	
55	In ascertaining whether the Vessel is a constructive total loss the insured value in	
56	the insurances on hull and machinery shall be taken as the repaired value and nothing in	
57	respect of the damaged or break-up value of the Vessel or wreck shall be taken into	
58	account.	
59	No claim for constructive total loss based upon the cost of recovery and/or	
60	repair of the Vessel shall be recoverable hereunder unless such cost would exceed the	
61	insured value in the insurances on hull and machinery. In making this determination, only	
62	the costs relating to a single accident or sequence of damages arising from the same	
63	accident shall be taken into account.	
64	Should the Vessel be a constructive total loss but the claim on the insurances on	
65	hull and machinery be settled as a claim for partial loss, no payment shall be due under	
66	this clause.	
67	Provided that the Valuation Clause, lines 55/58 above, or a clause having a	
68	similar effect, is contained in the insurances on hull and machinery, the settlement of a	
69	claim for constructive total loss thereunder shall be accepted as proof of the constructive	
70	total loss of the Vessel and in the event of a claim for total loss or constructive total loss	
71	being settled on the insurances on hull and machinery as a compromised total loss the	
72	amount payable hereunder shall be the same percentage of the sum insured as is paid on	
73	the said insurances.	
74	4. This insurance also covers:	
75	(a) General Average, Salvage and Salvage Charges not recoverable in full	
76	under the insurances on hull and machinery by reason of the difference	
77	between the insured value of the Vessel as stated therein (or any reduced	
78	value arising from the deduction therefrom in process of adjustment of	
79	any claim which law or practice or the terms of the insurances covering hull	
80	and machinery may have required) and the value of the Vessel adopted for	
81	the purpose of contribution to general average, salvage or salvage charges,	
	and machinery by reason of the difference between the insured value of the	86
	Vessel as stated therein and the value of the Vessel adopted for the purpose	87
	of ascertaining the amount recoverable under the insurances on hull and	88
	machinery, the liability under this insurance being for such proportion of the	89
	amount not recoverable as the amount insured hereunder bears to the said	90
	difference or to the total sum insured against excess liabilities if it exceeds	91
	such difference.	92
	(c) Collision Liability not recoverable in full under the Running Down and Sister	93
	Ship Clauses in the insurances on hull and machinery by reason of such	94
	liability exceeding the insured value of the Vessel as stated therein, in	95
	which case the amount recoverable under this insurance shall be such	96
	proportion of the difference so arising as the amount insured hereunder bears	97
	to the total sum insured against excess liabilities.	98
	Underwriters' liability under clauses 3 and 4 (a), (b) and (c), separately, in	99
	respect of any one claim, shall not exceed the amount insured hereunder.	100
	5. This insurance excludes claims due to or resulting from ice and/or freezing	101
	howsoever caused on inland waters above ocean tidal influence.	102
	6. The Vessel is covered subject to the provisions of this insurance at all times and	103
	has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow	104
	vessels or craft in distress, but it is warranted that the Vessel shall not otherwise tow or be	105
	towed, except as is customary or to the first safe port or place when in need of assistance.	106
	7. The Vessel is covered in case of any breach of warranty as to cargo, employment,	107
	towage, salvage services or date of sailing, provided notice be given to the Underwriters	108
	immediately after receipt of advices and any amended terms of cover and any additional	109
	premium required by them be agreed.	110
	8. Should the Vessel at the expiration of this insurance be at sea, or in distress, or at	111
	a port of refuge or of call, she shall, provided previous notice be given to the Underwriters,	112
	be held covered at a pro rata monthly premium, to her port of destination.	113
	9. Unless the Underwriters agree to the contrary in writing, this insurance shall be	114
	cancelled automatically at the time of the Vessel being sold or transferred voluntarily	115
	or otherwise to new management or chartered on a bareboat basis.	116
	However, if the Vessel has cargo on board and has already sailed from her	117
	loading port or is at sea in ballast then such cancellation shall, if required, be suspended	118
	until arrival at final port of discharge if with cargo, or at port of destination if in ballast.	119
	A pro rata daily return of premium shall be made.	120
	For the purposes of this clause, arrest shall not be considered a transfer to new	121
	management.	122
	This clause shall prevail notwithstanding any provision whether written, typed or	123
	printed in this insurance inconsistent therewith.	124
	10. If payment of premium is not made by the Assured within thirty (30) days after	125
	attachment of this insurance or, in the event Underwriters shall have agreed to accept	126
	deferred payments, if any payment of any premium is not made on the day agreed, this	127
	insurance may be cancelled at any time thereafter by Underwriters giving to the Assured	128
	named herein, and to third party payee or payees (if any) named in this insurance five (5)	129
	days' notice of such cancellation.	130
	Such notice may be given by Underwriters or on their behalf by an authorized	131
	Agent or by the Agent or Broker effecting this insurance.	132
	Such cancellation shall be without prejudice to the premiums earned and due for	133
	the period the insurance was in force.	134
	In the event of total loss sustained from any cause occurring prior to cancellation	135
	full annual premium shall be deemed earned.	136
	11. Underwriters will return _____ percent (net) for every thirty days of unexpired	137
	time if it be mutually agreed to cancel this insurance, but there shall be no cancellation or	138
	return of premium if the Vessel is lost from any cause.	139
	At expiration, Underwriters will return _____ percent (net) for every thirty	140
	consecutive days the Vessel was laid up in port out of commission with no cargo on board	141
	and not under repair for Underwriters account.	142
	In the event of the Vessel being laid up in port for a period of thirty consecutive	143
	days, a part only of which attaches to this insurance, it is hereby agreed that the laying up	144
	period in which either the commencing or ending date of this insurance falls shall be	145
	deemed to run from the first day on which the Vessel is laid up and that on this basis	146
	Underwriters shall pay such proportion of the return due in respect of a full period of thirty	147
	days as the number of days attaching thereto bear to thirty.	148
	12. <b><u>THIS CLAUSE SHALL BE PARAMOUNT AND SHALL OVERRIDE</u></b>	149
	<b><u>ANYTHING CONTAINED IN THIS INSURANCE INCONSISTENT THERewith:</u></b>	150
	(a) In no case shall this insurance cover loss, damage, liability or expense	151
	directly caused by	152
	(i) war, civil war, revolution, rebellion, insurrection, or civil strife arising	153
	therefrom, or any hostile act by or against a belligerent power	154
	(ii) capture, seizure, arrest, restraint or detention (barratry and piracy	155
	excepted) and the consequences thereof or any attempt thereat	156
	(iii) derelict mines, torpedoes, bombs or other derelict weapons of war.	157
	(b) In no case shall this insurance cover loss, damage, liability or expense	158
	arising from	159
	(i) the detonation of an explosive	160
	(ii) any weapon of war	161
	and caused by any terrorist or any person acting from a political motive.	162
	(c) In no case shall this insurance cover loss damage liability or expense	163

82 the liability under this insurance being for such proportion of the amount not  
83 recoverable as the amount insured hereunder bears to the said difference or  
84 to the total sum insured against excess liabilities if it exceeds such difference.  
85 (b) Sue and Labour Charges not recoverable in full under the insurances on hull

arising from any weapon of war employing atomic or nuclear fission and/or  
fusion or other like reaction or radioactive force or matter.  
13. This Insurance is subject to Canadian law and usage as to liability for and  
settlement of any and all claims.

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