

1996 年協會間紐約商品交易協議

(1996 年 9 月 1 日修訂)

INTER-CLUB NEW YORK PRODUCE EXCHANGE AGREEMENT

(As amended 1 September, 1996)

1996 Inter-Club NYPE Agreement

This Agreement is made on 1 September 1996 between the P & I Clubs being members of The International Group of P & I Associations listed below (hereafter referred to as "the Clubs").

This Agreement replaces the Inter-Club Agreement 1984 in respect of all charterparties specified in clause (1) hereof and shall continue in force until varied or terminated. Any variation to be effective must be approved in writing by all the Clubs but it is open to any Club to withdraw from the Agreement on giving to all the other Clubs not less than three months' written notice thereof, such withdrawal to take effect at the expiration of that period. After the expiry of such notice the Agreement shall nevertheless continue as between all the Clubs, other than the Club giving such notice who shall remain bound by and be entitled to the benefit of this Agreement in respect of all Cargo Claims arising out of Charterparties commenced prior to the expiration of such notice.

The Clubs will recommend to their Members without qualification that their Members adopt this Agreement for the purpose of apportioning liability for claims in respect of cargo which arise under, out of or in connection with all charterparties on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms), whether or not this Agreement has been incorporated into such charterparties.

Scope of application

- (1) This Agreement applies to any charterparty which is entered into after the date hereof on the New York Produce Exchange Form 1946 or 1993 or Asbatime Form 1981 (or any subsequent amendment of such Forms).
- (2) The terms of this Agreement shall apply notwithstanding anything to the contrary in any other provision of the charterparty; in particular the provisions of clause (6) (time bar) shall apply notwithstanding any provision of the

本協議係於 1996 年 9 月 1 日由下列表列之國際 P&I 集團會員之 P&I 協會(以下稱為"各協會")所締結。

本協議取代有關第(1)條所指所有租傭船契約之 1984 年協會間協議，且應繼續有效以迄變更或終止為止。任何變更必須經所有協會書面同意，始生效力，其容許所有協會，以向其他協會提出不少於三個月書面通知，撤出本協議，該撤出應於該期間屆滿時生效。於該通知期限屆滿後，本協議仍應於所有協會間繼續有效，然提出該通知之協會除外，而該協會就其有關該通知屆滿前開始生效之租傭船契約所生之所有貨物求償，仍應受拘束且有權主張本協議之利益。

各協會應不受限制地建議其會員，為區分有關紐約商品交易格式 1946 年版或 1993 年版或 Asbatime 格式 1981 年版(或該格式之任何後續修正版本)所致、所生或有關之貨物求償責任之目的，無論本協議是否併入該租傭船契約中，均能採用本協議。

適用範圍

- (1) 本協議適用於本協議簽署日以後，以紐約商品交易格式 1946 年版或 1993 年版或 Asbatime 格式 1981 年版(或該格式之任何後續修正版本)，所締結之租傭船契約。
- (2) 無論租傭船契約任何其他規定是否有相反規定，本協議規定均應適用之；特別是第 6 條(時效屆滿)之規定，應適用於任何與之相反之租傭船契約或法律規

charterparty or rule of law to the contrary.

- (3) For the purposes of this Agreement, Cargo Claim(s) mean claims for loss, damage, shortage (including slackage, ullage or pilferage), overcarriage of or delay to cargo including customs dues or fines in respect of such loss, damage, shortage, overcarriage or delay and include
- (a) any legal costs claimed by the original person making any such claim;
 - (b) any interest claimed by the original person making any such claim;
 - (c) all legal, Club correspondents' and experts' costs reasonably incurred in the defence of or in the settlement of the claim made by the original person, but shall not include any costs of whatsoever nature incurred in making a claim under this Agreement or in seeking an indemnity under the charterparty.

(4) Apportionment under this Agreement shall only be applied to Cargo Claims where:

- (a) the claim was made under a contract of carriage, whatever its form,
 - (i) which was authorised under the charterparty; or
 - (ii) which would have been authorised under the charterparty but for the inclusion in that contract of carriage of Through Transport or Combined Transport provisions, provided that
 - (iii) in the case of contracts of carriage containing Through Transport or Combined Transport provisions (whether falling within (i) or (ii) above) the loss, damage, shortage, overcarriage or delay occurred after commencement of the loading of the cargo onto the chartered vessel and prior to completion of its discharge from that vessel (the burden of proof being on the Charterer to establish that the loss, damage, shortage, overcarriage or delay did or did not so occur); and
 - (iv) the contract of carriage (or that part of the transit that comprised carriage on the chartered vessel) incorporated terms no less favourable to the carrier than the Hague or Hague-Visby Rules, or, when compulsorily applicable by operation of law to the contract of carriage, the Hamburg Rules or any national law giving effect thereto; and
- (b) the cargo responsibility clauses in the charterparty have not been materially amended. A material amendment is one which makes the liability, as between Owners and Charterers, for Cargo Claims clear. In particular, it is agreed solely for the purposes of this Agreement:
 - (i) that the addition of the words "and responsibility" in clause 8 of the New York Produce Exchange Form 1946 or 1993 or clause 8 of the Asbatime Form 1981, or any similar amendment of the charterparty making the Master responsible for cargo handling, is not a material amendment; and
 - (ii) that if the words "cargo claims" are added to the second sentence of clause 26 of the New York Produce Exchange Form 1946 or 1993 or clause

則。

- (3) 為本協議之目的，貨物求償係指貨物之滅失、毀損、短少（包括鬆塌、損耗及失竊）、超載或遲延，包括與該滅失、毀損、短少、超載或遲延有關之關稅或罰金，並包括：
- (a) 原求償人所求償之任何法律成本；
 - (b) 原求償人所求償之利息；
 - (c) 為抗辯或與原求償人進行協商結果合理發生之所有法律、協會聯絡人或專家費用，但不包括為依本協議提出求償或為尋求租傭船契約之補償無論任何性質之任何費用。

(4) 依本協會之責任區分應僅適用於下列貨物求償類型：

- (a) 依運送契約所提出之求償，而其構成：
 - (i) 其係依租傭船契約所授權；或
 - (ii) 得獲租傭船契約授權，然該運送契約有規定一貫運送或複合運送條款，但以
 - (iii) 如運送契約有規定一貫運送或複合運送條款（符合前述(i)及(ii)款規定），貨物開始裝載上租傭船舶後，及自該船上卸載完成前（舉證責任在租傭船人身上，其應證明滅失、毀損、短少、超載或遲延於該期間發生或未發生）所發生之滅失、毀損、短少、超載或遲延；
 - (iv) 運送契約（或該租傭船舶所履行運送之部分）併入比海牙或海牙威士比規則或因運送契約之法律適用而強制適用漢堡規則或任何具同樣效果的國家立法時更不為不利於運送人之約定。
- (b) 租傭船契約內之貨物責任條款不應被實質修改。一實質修改係將船舶所有人及租傭船人間有關貨物求償之責任予以明確。特別是，為本協議之唯一目的，謹此同意：
 - (i) 於紐約商品交易格式 1946 年版或 1993 年版第 8 條或 Asbatime 格式 1981 年版第 8 條或該租傭船契約之任何類似修訂，加上「及責任」用語，使船長應負責貨物搬移，不應為實質修改；
 - (ii) 如於紐約商品交易格式 1946 年版或 1993 年版第 26 條或 Asbatime 格式 1981 年版第 25

25 of the Asbatime Form 1981, apportionment under this Agreement shall not be applied under any circumstances even if the charterparty is made subject to the terms of this Agreement; and

(c) the claim has been properly settled or compromised and paid.

(5) This Agreement applies regardless of legal forum or place of arbitration specified in the charterparty and regardless of any incorporation of the Hague, Hague-Visby Rules or Hamburg Rules therein.

Time Bar

(6) Recovery under this Agreement by an Owner or Charterer shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given to the other party to the charterparty within 24 months of the date of delivery of the cargo or the date the cargo should have been delivered, save that, where the Hamburg Rules or any national legislation giving effect thereto are compulsorily applicable by operation of law to the contract of carriage or to that part of the transit that comprised carriage on the chartered vessel, the period shall be 36 months. Such notification shall if possible include detail of the contract of carriage, the nature of the claim and the amount claimed,

The apportionment

(7) The amount of any Cargo Claim to be apportioned under this Agreement shall be the amount in fact borne by the party to the charterparty seeking apportionment, regardless of whether that claim may be or has been apportioned by application of this Agreement to another charterparty.

(8) Cargo Claims shall be apportioned as follows:

(a) Claims in fact arising out of unseaworthiness and/or error or fault in navigation or management of the vessel:

100% Owners

save where the Owner proves that the unseaworthiness was caused by the loading, stowage, lashing, discharge or other handling of the cargo, in which case the claim shall be apportioned under sub-clause (b).

(b) Claims in fact arising out of the loading, stowage, lashing, discharge, storage or other handling of cargo:

100% Charterers

unless the words "and responsibility" are added in clause 8 or there is a similar amendment making the Master responsible for cargo handling in which case:

50% Charterers

50% Owners

save where the Charterer proves that the failure properly to load, stow, lash, discharge or handle the cargo was caused by the unseaworthiness of the vessel in which case:

條第二句加上「貨物求償」乙詞，本協議之責任區分於任何情況下即不應適用，即使該租傭船契約係適用本協議之規定；及

(c) 該求償業已適當地獲得解決或達成協議及理賠付款。

(5) 無論租傭船契約指定之法律管轄或仲裁地點為何，亦無論海牙規則、海牙威士比規則或漢堡規則是否併入該租傭船契約，本協議均適用之。

時效屆滿

(6) 除貨物求償之書面通知於貨物受領日或自貨物應受領日之 24 個月內通知他方，否則船舶所有人或租傭船人依本協議之追償應視為放棄且時效絕對屆滿，然如漢堡規則或具類似效果之任何國家立法強制適用於運送契約或租傭船舶所履行之運送之一部份時，該期間應為 36 個月。該通知應儘可能地包含運送契約、求償之性質及求償之金額。

責任區分

(7) 依本協議予以區分之任何貨物求償金額應為尋求責任區分之租傭船契約之一方所實際負擔之金額，無論該求償得或業依另一租傭船契約適用本協議而為區分。

(8) 貨物求償應依下列方式為區分：

(a) 因不適航及/或航行或管理船舶之過錯或疏失所致事實上之求償：

100% 船舶所有人

然船舶所有人證明該不適航係因貨物之裝載、堆存、繫固、卸載或其他搬移所致者時，於此情況，即應依下列(b)款為求償責任之區分。

(b) 因貨物之裝載、堆存、繫固、卸載或其他搬移所致事實上之求償：

100% 租傭船人

然第 8 條加上「及責任」乙詞或使船長負責貨物搬移之類似修改者除外，於此情況下：

50% 租傭船人

50% 船舶所有人

然如租傭船人證明疏於貨物之適當裝載、堆存、繫固、卸載或其他搬移係因船舶不適航所致者時，於此情況：

- 100% Owners
- (c) Subject to (a) and (b) above, claims for shortage or overcarriage:
- 50% Charterers
50% Owners
- unless there is clear and irrefutable evidence that the claim arose out of pilferage or act or neglect by one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.
- (d) All other cargo claims whatsoever (including claims for delay to cargo):
- 50% Charterers
50% Owners
- unless there is clear and irrefutable evidence that the claim arose out of the act or neglect of the one or the other (including their servants or sub-contractors) in which case that party shall then bear 100% of the claim.

- 100% 船舶所有人
- (c) 於適用前述(a)及(b)款之情況下，有關短少或超載之求償：
- 50% 租傭船人
50% 船舶所有人
- 然如有清楚且明確證據顯示求償係因盜竊或任一方或他方(包括其受雇人或次契約履行輔助人)之作為或過失所致者時，於此情況下，則由該方負擔該求償之100%。
- (d) 所有其他貨物求償(包括貨物之遲延求償)：
- 50% 租傭船人
50% 船舶所有人
- 然如有清楚且明確證據顯示求償係因一方或他方(包括其受雇人或次契約履行輔助人)之作為或過失所致者時，於此情況下，則由該方負擔該求償之100%。

Governing Law

- (9) This Agreement shall be subject to English Law and Jurisdiction, unless it is incorporated into the charterparty (or the settlement of claims in respect of cargo under the charterparty is made subject to this Agreement), in which case it shall be subject to the law and jurisdiction provisions governing the charterparty.

準據法

- (9) 本協議應適用英國法及受英國管轄，然本協議併入租傭船契約者(或有關該租傭船契約貨物求償之解決係適用本協議)，則應適用規範該租傭船契約之準據法及管轄。

The American Steamship Owners' Mutual Protection and Indemnity Association, Inc.
Assuranceforeningen Gard (Gjensidig)
Assuranceforeningen Skuld (Gjensidig)
The Britannia Steam Ship Insurance Association Limited
The Japan Ship Owners' Mutual Protection and Indemnity Association
Liverpool and London Steamship Protection and Indemnity Association Limited
The London Steam-Ship Owners' Mutual Insurance Association Limited
The Newcastle Protection and Indemnity Association
The North of England Protecting and Indemnity Association Limited
The Shipowners' Mutual Protection and Indemnity Association (Luxembourg)
Skuld Mutual Protection and Indemnity Association (Bermuda) Limited
The Standard Steamship Owners' Protection and Indemnity Association Limited
The Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Limited
The Standard Steamship Owners' Protection and Indemnity Association (Europe) Limited
The Steamship Mutual Underwriting Association Limited
The Steamship Mutual Underwriting Association (Bermuda) Limited
The Steamship Mutual Underwriting Association (Europe) Limited
Sveriges Angfartygs Assurans Forening
The United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited
The West of England Ship Owners' Mutual Insurance Association (Luxembourg)