

Joint Cargo Committee

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JC 2009/020
2 November 2009

JCC Project Cargo Insurance / Project Cargo Delay in Start Up

Further to the circulation of the Draft Project Cargo Insurance / Project Cargo Delay in Start Up (PCI/PCDSU) wording under JC 2009/012 (12 May 2009), the JCC has completed its drafting work on this wording.

The resulting wording, JC2009/020, is attached. It incorporates amendments arising from the general consultation and from discussions with representatives from the LIIBA which took place following the market briefing held on 13 May.

The wording incorporates a Project Overview, and also includes an optional Questionnaire (JC2009/000A) which can be used alongside the wording.

It is not expected that the new clauses will be suitable to cover every project where DSU cover is required. It will, however, provide a clearer starting point for negotiation between insurers and their clients, with the cover being tailored to suit specific requirements and providing clear notification to insurers where coverage requirements are amended.

It should be noted that this clause is purely illustrative and different policy conditions may be agreed. Specimen clauses are available to any interested person upon request. In particular:

1. in relation to any clause which excludes losses from the cover, insurers may agree a separate insurance policy covering such losses or may extend the clause to cover such events;
2. in relation to clauses making cover of certain risks subject to specific conditions each insurer may alter the said conditions.

Copies of the revised clauses will be made available from the Joint Cargo Committee Page of the Lloyd's Market Association website (see below), through the IUA website www.iua.co.uk, and will be made available through the Lloyd's Wordings Repository.

Neil Smith
Secretary

Information relating to the work of the Joint Cargo Committee, including an outline of key issues under discussion, circulars and details of forthcoming Cargo Forum meetings, can be accessed from the Joint Cargo Committee page of the LMA website www.lmalloyds.com

The page can be accessed via the following link:

http://www.lmalloyds.com/AM/Template.cfm?Section=Joint_Cargo1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=3&ContentID=7044

Project Cargo Insurance and Project Cargo Delay in Start Up Wording

Project Overview

1. Insured

Insured Section 1.

1. Principal(s) / Project Owner(s) Address:	
2. Contractor(s)	
3. Sub-Contractor(s)	
4. Trustee(s)	
5. Lender(s)	
6. Other, to be agreed by insurers prior to attachment.	

Insured Section 2.

7. Principal(s) / Project Owner(s)	
8. Trustee(s)	
9. Lender(s)	
10. Other, to be agreed by insurers prior to attachment	

2. The Project.

The transportation of goods, materials and equipment for the purpose of construction, erection, testing, start-up, commissioning, operation and maintenance of the

.....
project and all ancillary and associated works, in conjunction with the construction project.

3. Period of Insurance.

From Notice to Proceed Date being (00.01a.m. local standard time)/...../..... until either the completion of delivery of Project Cargo insured under Section 1 to the Project Site, or the Scheduled Commercial Operation Date, specified within the information provided to insurers as amended from time to time, whichever shall last occur.

Extensions to the Scheduled Commercial Operation Date up todeemed automatically agreed.

4. The Project Site.

Located at

.....

5. The Interest.

Section 1:

Project Cargo being materials, equipment and supplies required for the construction of the Project described in item 2 of this Project Overview and which is the subject of this insurance.

Section 2:

The Insured to select, prior to inception, either:

- (a) Loss of Gross Profit following delay in Scheduled Commercial Operation Date and (c). below
- or
- (b) Fixed Costs and/or Debt Service following delay in Scheduled Commercial Operation Date and (c). below
- (c) Increased Cost of Working in conjunction with (a) or (b). above.

6. The Limits of Indemnity.

Section 1

.....
any one conveyance and/or location.

Section 2

Up to a maximum of.....for amonth Indemnity Period.

7. The Insured's Deductible.

7.1 Section 1

.....each and every loss.

7.2 Section 2

..... days of indemnifiable delay, in the aggregate, will be deducted from the claim hereon.

Or as otherwise stated in the policy.

8. Territorial Limits.

From supplier(s), manufacturer(s) and/or other locations worldwide to Project Site as described in Item 4 of this Project Overview.

9. The Scheduled Commercial Operation Date.

(00.01a.m. local standard time)...../...../..... or multiple dates if required, scheduled and agreed by insurers.

10. The Premium.

Section 1 (Project Cargo)	
Section 2 (Delay in Start-up)	

PCI/PCDSU Project Overview

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These clauses are purely illustrative. Different policy conditions may be agreed. The specimen clauses are available to any interested person upon request. In particular:

- (a) in relation to any clause which excludes losses from the cover, insurers may agree a separate insurance policy covering such losses or may extend the clause to cover such events;
- (b) in relation to clauses making cover of certain risks subject to specific conditions each insurer may alter the said conditions.

These clauses are purely illustrative. Different policy conditions may be agreed. The specimen clauses are available to any interested person upon request. In particular:

- (a) in relation to any clause which excludes losses from the cover, insurers may agree a separate insurance policy covering such losses or may extend the clause to cover such events;
- (b) in relation to clauses making cover of certain risks subject to specific conditions each insurer may alter the said conditions.

Project Cargo Insurance and Project Cargo Delay in Start Up Wording JC2009/020

SECTION 1 MARINE CARGO POLICY [To be inserted here]

SECTION 2 MARINE DELAY IN START UP

1. Insuring Agreement.

This policy will indemnify the insured for actual loss sustained to the insured's business generated at the Project Site if at any time during the period of the policy an indemnifiable event occurs which causes a delay to the Scheduled Commercial Operation Date consequent upon

- 1.1. Loss of and/or damage to and/or delay in arrival of the Project Cargo which results from an event giving rise to an indemnifiable claim under Section 1 of this policy, or which would have been the subject of indemnity without the application of the Section 1 Deductible as stated in Item 7.1 of the Project Overview;
- 1.2. loss of or damage to or mechanical breakdown of the hull or machinery and/or equipment of the vessel, craft or aircraft, on which any of the Project Cargo is being carried or is intended to be carried which would be covered under:
 - The Institute Voyage Clauses – Hulls 1/10/83 (CL 285) and/or Institute War and Strikes Clauses Hulls – Voyage 1/10/83 (CL 295) or
 - an Aircraft All Risks policy, Section 1 clause AVN 16, including war, hi-jacking and allied perils as per LSW555D;
- 1.3. loss of or mechanical breakdown of, any motor or rail vehicle or attachment thereto upon which any of the Project Cargo is being transported or is intended to be transported;
- 1.4. the vessel, aircraft or other conveyance on which any of the Project Cargo is carried or is intended to be carried, being involved in a general average salvage or life saving operation.

2. LIMIT OF INDEMNITY.

Subject to the Insuring Agreement, and the terms, conditions and exclusions of this policy, this policy will indemnify the Insured up to a maximum of

..... for a.....month Indemnity Period.

3. MEASURE OF INDEMNITY.

The indemnity under this insurance for actual loss sustained shall be as selected by the Insured and shown under Item 5 of the Project Overview prior to inception and will be either:

1) the loss of Gross Profit calculated as per 3.1 a) below,

or

2) making good the inability to proportionally pay Fixed Costs and Debt Servicing calculated as per 3.1 b) below due to the reduction in Turnover

And shall include, in both cases, any Increased Cost of Working expenses calculated as per 3.1 (c) below:

3.1. (a) In respect of loss of Gross Profit:

The sum obtained by applying the Rate of Gross Profit to the difference between the Turnover which would have been achieved during the Indemnity Period and the actual Turnover during that period in consequence of one or more of the occurrences listed in 1.1, 1.2, 1.3 and 1.4 above.

(b) In respect of Fixed Costs and Debt Servicing Costs:

The sum of expenses, based upon the Rate of Fixed Costs and Debt Servicing, incurred by the Insured's project which are not affected by any change in the output of the insured project;

and

(c) In respect of Increased Cost of Working the measure of indemnity shall be:

The additional expenditure necessarily and reasonably incurred by the insured for the sole purpose of avoiding or diminishing the reduction in Turnover.

3.2. From the amounts recoverable under 3.1 shall be deducted any sum saved during the Indemnity Period as may cease or be reduced in consequence of the occurrence;

If the sum insured is less than the sum obtained by applying to the Turnover either the rate of Gross Profit, or the Rate of Fixed Costs and Debt Servicing, as applicable, the amount payable shall be reduced proportionately.

4. ATTACHMENT AND TERMINATION OF RISK

4.1. The indemnity afforded by paragraph 1.1 above shall operate, whilst the Project Cargo is in the normal course of transit, as per the attachment provision contained in Section 1 of this policy, but no earlier than commencement of loading at suppliers. **Irrespective of any termination provisions contained in Section 1 of this policy, coverage hereunder will cease in line with the termination provisions applicable under Section 1 of this Policy, or on completion of unloading at project laydown area, whichever is the sooner. Onsite or offsite storage shall be subject to agreement by insurers.**

4.2. The indemnity afforded by paragraphs 1.2, 1.3 and 1.4 above in respect of vessels, craft or conveyances to be used for the transportation of the Project Cargo referred to in Section 1 of this policy shall attach from the time that such vessels, craft or conveyances come alongside the berth or mooring point at which the Project Cargo described in the information provided to insurers is to be loaded thereon (including any casualties or incidents arising during such berthing or mooring) and in respect of other conveyances (including aircraft) from the time that such conveyance arrives at the place where the Project Cargo described in the information provided to insurers is to be loaded thereon.

5. DEDUCTIBLE.

..... days of indemnifiable delay, in the aggregate, will be deducted from amounts recoverable under this policy.

The deductible will be calculated by dividing the indemnity amount, including the Increased Cost of Working, agreed by insurers by the actual number of days of indemnifiable delay. The resulting daily amount will be multiplied by the number of days shown in item 7.2 of the Project Overview and the resulting amount will be deducted from the claim.

Where indemnity under this policy is solely in respect of Increased Cost of Working, the amount of the deductible shall be in the same proportion as the number of days of deductible relate to the number of days of Indemnity that would have applied but for the Increased Cost of Working expenditure.

6. EXCLUSIONS.

In no case shall there be indemnity under this Section of the policy for:

- 6.1. Loss of or Damage to the Project Cargo as per the information provided to insurers or any expenses recoverable under Section 1.
- 6.2. Delay as a consequence of fines, penalties, liquidated damages, punitive damages and/or damages for breach of contract, late or non-completion of orders, or any penalties of whatever nature, or any additional damages resulting from multiplication of compensatory damages, unless specifically included by insurers prior to inception.
- 6.3. Delay as a consequence of alterations, additions, improvements or elimination of any deficiencies in the Project Cargo insured under Section 1 of this policy, carried out after the occurrence of damage.
- 6.4. Delay as a consequence of lapse or cancellation of a lease, import licence and/or regulation or restriction unless resulting from a peril insured under Section 2, paragraphs 1.1, 1.2, 1.3 or 1.4. or which would have been covered but for the application of the Section 1 deductible.
- 6.5. Delay as a consequence of commandeering, requisition or destruction or damage by order of any government de jure or de facto or by any public authority other than where covered under the Institute War & Strikes Clauses Hulls – Voyage 01/10/83 (CL295), and other than where specifically covered under section 1.
- 6.6. Delay as a consequence of Final Positioning at the project site.
- 6.7. Delay as a consequence of physical loss or damage to contractors and/or sub contractors materials, equipment and supplies other than Project Cargo procured by contractors or sub/contractors.
- 6.8. Delay as a consequence of any restrictions imposed by a public authority other than where covered under Section 1.
- 6.9. Delay as a consequence of non-availability of funds.

7. CLAIMS.

- 7.1. Any loss which is the subject of indemnity under this policy shall be calculated in the manner described in Clause 3 above and item 7.2 below.

7.2. The insured shall produce all necessary and reasonable evidence as may be required by insurers, for the purpose of investigating or verifying a claim under this policy.

In calculating the amount of loss the following points shall in particular be taken into consideration:

- a) Variations and special circumstances which would have affected either the Scheduled Commercial Operation Date or the insured business had the delay not occurred.
- b) Variations and special circumstances affecting the insured business after the Scheduled Commercial Operation Date.
- c) Any liquidated damage payments received by the insured.

In the event of loss or expense, which is the subject of indemnity under this policy insurers may make interim payments during the Indemnity Period.

In respect of Increased Cost of Working expenditure, insurers will make interim payments as incurred.

7.3. If the Scheduled Commercial Operation Date of this project is revised at any stage as a result of delay or postponement by any cause, which is not the subject of indemnity under this policy, the resulting new Scheduled Commercial Operation Date shall be the basis for the adjustment of any claim which may be recoverable under this policy.

7.4. In the event that the Project Cargo described in the information provided to insurers is lost or damaged or appears to be lost or damaged at any point during the transit, the insurers of this policy shall be notified as soon as practicable, whether they are the primary insurers of the cargo or not. Insurers, upon receipt of such advice, may agree such reasonable action as they consider necessary to minimise any such loss, damage or expense.

7.5. Where Increased Cost of Working expenses are incurred by the insured such expenses shall be adjusted and approved by insurers or their appointed representatives.

7.6. Nominated Adjuster:

.....
8. SPECIAL CONDITIONS.

8.1. It is a condition precedent to the recovery of indemnity under this Section of the policy that the Project Cargo described in the Project Overview is insured for Marine Cargo and War, and Strikes risks.

8.2. The overseas vessels carrying named Project Cargo Critical Items must comply with the Institute Classification Clause (CL354) dated 1/1/01 and/or a vessel acceptable under the terms and conditions of Section 1.

8.3. In the event of any revision to Project Cargo Critical Item scheduled shipping dates insurers shall have the right to review the rates of this policy.

9. DEFINITIONS.

9.1. Actual Loss Sustained

The actual and proven financial loss to the Insured in accordance with the measure of indemnity.

9.2. Annual Turnover

The Turnover which would have been achieved, had the indemnifiable event not occurred during the 12 months after the planned date of completion of the insured works.

9.3. Deductible

The amount of the insured loss and/or insured costs retained by the insured.

9.4. Final Positioning

The commencement of installation of the Project Cargo directly from the carrying conveyance at the Project Site.

9.5. Fixed Costs And Debt Servicing

Costs and expenses incurred by the insured project which are not affected by any change in the output of the insured project.

9.6. Gross Profit

The amount by which the Annual Turnover exceeds the amount of specified working expenses.

Specified working expenses are those costs which vary directly with Turnover such as costs for the acquisition of goods, raw materials, power and supplies.

9.7. Increased Cost of Working

The additional expenditure necessarily and reasonably incurred by the insured for the sole purpose of avoiding or diminishing the reduction in Turnover which, without such expenditure, would have taken place during the Indemnity Period but not exceeding the amount by which such expenditure reduced the loss of Gross Profit indemnified under this policy.

9.8. Indemnity Period

The period during which the production capability of the project is affected in consequence of the indemnifiable event.

The Indemnity Period begins with the date upon which, had the indemnifiable event not occurred, the insured works, including full operational testing, would have been completed.

The Indemnity Period ends with the actual date upon which the insured works are completed, including full operational testing, but not exceeding the period of delay to the Project that would have been caused had such part of the property which has been lost or damaged been rebuilt, repaired or replaced to its condition immediately prior to the occurrence of the indemnifiable event with due diligence. In no case shall the Indemnity Period exceed that stated in Clause 6.2 of the Project Overview and Clause 2 herein.

9.9. Notice to Proceed

The date contracts are signed relating to the final approval of the project contract itself.

9.10. **Project Cargo**

The materials, equipment and supplies required for the construction of the Project described in item 2 of the Project Overview and which is the subject of this insurance.

9.11. **Project Cargo Critical Items**

A Project Cargo Critical Item shall be an item as defined within the General Policy Conditions Survey Warranty and/or as listed in the Schedule of Named Project Cargo Critical Items.

9.12. **Rate Of Gross Profit**

The amount, as a percentage, which would have been earned on the turnover during the Indemnity Period had the indemnifiable event not occurred.

9.13. **Rate of Fixed Costs and Debt Servicing**

The rate of fixed costs and debt servicing shall be the proportion of fixed costs and debt servicing expressed as a percentage of Annual Turnover.

9.14. **Scheduled Commercial Operation Date**

The provisional date(s) stated in the information provided to insurers, or any revised date either agreed by Insurers or which should have been notified to insurers pursuant to Duty of Insured 10.6 upon which the business would have commenced had the delay in scheduled commercial operation date not occurred.

9.15. **Turnover**

The amount of money paid or payable to the insured for goods, products or services sold or delivered in the course of the insured business conducted at the project site.

10. DUTY OF INSURED.

It is the duty of the insured, their servants and agents that they shall:

- 10.1. Act with reasonable dispatch in all circumstances within their control.
- 10.2. Take all such measures as may be reasonable for the purpose of averting or minimising loss.
- 10.3. Commit funds, equipment or facilities for the repair or replacement of destroyed, delayed or damaged items thereby mitigating potential claims.
- 10.4. Ensure that all rights against carriers, bailees, or other third parties are properly preserved and exercised, and the insurers will in addition to any loss recoverable hereunder, reimburse the Insured for any charges properly and reasonably incurred in pursuance of these duties.
- 10.5. Advise insurers of any revisions to the scheduled shipping dates of all Project Cargo Critical Items as stated in the underwriting information provided by the insured at the inception of the policy.
- 10.6. Give prompt notice to insurers in the event of delays to programme, of extensions of time being granted and/or the Scheduled Commercial Operation Date of this project being otherwise amended and insurers shall have the right to review the rates, terms and conditions of this policy following receipt of such notice, as stated in items 7.3 and 8.3 above.

All actions taken by the Insured or Insurers with the objective of saving, protecting or recovering the Project Cargo shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

11. LAW, PRACTICE AND JURISDICTION.

This insurance is subject to English law and practice and the exclusive jurisdiction of the Courts of England and Wales, except as may be expressly provided herein to the contrary.

GENERAL POLICY CONDITIONS Applicable to Section 1 and 2.

1. OTHER INSURANCE

Where the insured is, irrespective of this policy, entitled to be indemnified in whole or in part by any other insurance as a result of loss or damage or delay which would otherwise have been indemnifiable in whole or in part by the insurers of this policy, there shall be no contribution by the insurers of this policy, whether on the basis of any double insurance for such loss damage or delay for which the insured is entitled to be indemnified by such other insurance or otherwise.

2. SURVEY WARRANTY

The Named Surveyor is :

.....

(and/or their nominated representative)

It is warranted that the Named Surveyor attends and approves all loading, all stowage (Including protection for non containerised Critical Items shipped on deck), and unloading to or from carrying conveyances of all named Project Cargo Critical Items (shown below).

All of the Named Surveyor's recommendations are to be complied with by the insured.

All named Project Cargo Critical Items are to be shipped under deck other than where such critical items are shipped in totally enclosed steel containers per purpose built cellular container vessels, or where on deck stowage has been approved by the Named Surveyor.

Shipments requiring the use of local barges or lightering shall not be regarded as on deck.

However, where local barges or lightering is used the Named Surveyor will approve the tug, barge, fastening and towing operations in accordance with this Survey Warranty.

In respect of Project Cargo Critical Items, it is warranted that where items are not new and not sourced directly from the original manufacturer, packaging is approved by the Named Surveyor.

All fees for the account of the insured unless otherwise agreed.

This Survey Warranty does not apply if:

- 1 Any critical items are shipped;
 - a. In full and/or sole use fully enclosed containers door to door.
 - b. By airfreight (other than heavy lift aircraft).
- and

- 2 The proposed shipping methodologies and/or procedures of any critical items are deemed acceptable by the Named Surveyor for the proposed transportation and in their opinion survey attendance can be waived.
- 3 In the Named Surveyor's opinion any component or sub-assembly of any critical item does not necessitate a survey.
- 4 The Agreement Parties agree to waive survey requirements for any specific shipment or part of the entire transportation.

Failure to comply with this warranty shall not affect this insurance except as respects to the individual shipment (s) concerned. This insurance will continue in full force and effect for all other shipments which comply with the survey warranty.

In the event of a breach of the Survey Warranty the policy coverage will not cease but the insuring conditions under Section 1 of this policy shall be deemed to be no wider than:

Institute Cargo Clauses B dated 01/01/2009 (CL383) with clause 1.3 deleted.

Institute War Clauses (Cargo) dated 01/01/2009 (CL385)

Institute Strikes Clauses (Cargo) dated 01/01/2009 (CL386)

In respect of on deck shipments and/or local barges or lightering policy coverage will be deemed to be no wider than

Institute Cargo Clauses C dated 01/01/2009 (CL384)

Institute War Clauses (Cargo) dated 01/01/2009 (CL385)

Institute Strikes Clauses (Cargo) dated 01/01/2009 (CL386)

In the event that the insured subsequently complies with the conditions of the Survey Warranty, then from the date of compliance, as evidenced by the surveyor's inspection certificate, full policy coverage will be reinstated. Where a breach of Survey Warranty has occurred and cover is subsequently reinstated and a loss occurs the onus of proof that any such loss(es) would be recoverable under this policy rests with the insured to prove to the satisfaction of the insurers hereon.

It is further understood and agreed that where the Insured or Companies acting on their behalf have provided the Named Surveyor or their customary notification office with the shipment Estimated Time of Delivery and Estimated Time of Arrival at least 72 hours in advance of estimated load/discharge dates then failure of the Surveyors to actually attend shall be deemed not to be a breach of the above warranty.

Project Cargo Critical Items

A Project Cargo Critical Item shall display one or more of the following characteristics:

All Project Cargo which, in the event of loss or damage during transit, cannot be repaired, remanufactured, replaced, reshipped, installed, tested and commissioned within sufficient time to arrive at the Project Site in time to facilitate the Scheduled Commercial Operating Date.

- Where the unit price of an item of Project Cargo is valued in excess of and will be shipped in break-bulk.
- Any Project Cargo which including packing has dimensions in excess of 12 Meters length and/or 2.5 Meters wide and/or 2.5 Meters high [or US equivalent] and therefore does not fit inside a standard 40 foot container or equivalent road trailer.

- Any Project Cargo including packing with a weight in excess of Metric Tonnes.
- Ocean barge shipments.

Schedule of Named Project Cargo Critical Items

**PCI/PCDSU Wording
JC2009/020
02 November 2009**

Project Cargo Insurance and Project Cargo Delay in Start Up Wording Questionnaire JC2009/020A

The information provided herein is material to the insurers acceptance of risk.

Project Cargo Critical Items

A Project Cargo Critical Item shall display one or more of the following characteristics:

All Project Cargo which, in the event of loss or damage during transit, cannot be repaired, remanufactured, replaced, reshipped, installed, tested and commissioned within sufficient time to arrive at the Project Site in time to facilitate the Scheduled Commercial Operating Date.

- Where the unit price of an item of Project Cargo is valued in excess of and will be shipped in break-bulk
- Any Project Cargo which including packing has dimensions in excess of 12 M length and/or 2.5 M wide and/or 2.5 M high [or US equivalent] and therefore does not fit inside a standard 40' container or equivalent road trailer.
- Any Project Cargo including packing with a weight in excess of MT
- Ocean barge shipments.

1. Name of Insured parties including principal insured, lenders, financiers and contractors (including sub contractors):	
2. Location of final site:	
3. Project Description:	
4. Please attach a full schedule of items to be shipped, including values to be declared for transit insurance and proportion containerised.	
5. Are domestic transits to be covered under this policy or under the CAR/EAR Policy?	
6. Where and from whom are the goods to be sourced. Packing specifications and terms of sale from supplier to be provided:	
7. Full details of the delivery route from manufacturers location to final site (including details of hauliers/sea/air/road/rail and barge.	
8. Contact details of Project Logistic	

Manager.	
9. Basis of valuation:	
10. Scheduled Commercial Operation Date(s).	
11. Anticipated transit/shipping dates for all Critical Items being transported.	
12. What is the maximum replacement period in the event of total loss of any one Project Cargo Critical Item (calculated from the date of re-order to date of delivery)	
13. What is the maximum installation, testing and commissioning period for Project Cargo Critical Items.	
14. How is the project being financed:	
15. Period of Indemnity	
16. Full details and breakdown of indemnity being purchased.	
17. Are there any second hand Project Cargo Critical Items. (If so, please provide details).	
18. If the answer to 17 is yes, are replacements for these second hand Project Cargo Critical Items available?	
19. Are there any Project Cargo Critical Items of a unique or special nature, including prototypes	
20. What repairs of Project Cargo Critical Items can be effected on site:	
21. In the event of loss or damage to the Project Cargo, can part or all of the Indemnity be earned/paid by alternative means. If so, how much and by what means:	

**PCI/PCDSU Questionnaire
JC2009/020A
02 November 2009**