



Excess of Loss Policy Wording LMW201608

In consideration of the premium paid and in reliance upon the proposal form and statements made to the *Company* by the Insured and subject to the Schedule and endorsements made a part hereof and the terms, conditions and limitations set forth herein, the *Company* hereby agrees as follows:

1. Insuring Agreement

The *Company* will make payment to the Insured in respect of any *Loss* caused by the non-receipt of an undisputed payment owing to the Insured from a *Buyer* in respect of *Shipments* made. The *Company* will pay to the Insured the *Covered Percentage* of any *Loss* in excess of the available *Annual Aggregate Deductible*. When calculating a claim, the amount of *Loss* included shall not exceed the *Credit Limit* for the *Buyer*.

2. Definitions

a) Annual Aggregate Deductible

The amount of *Loss* in respect of *Shipments* made during the *Policy Period* that the Insured shall bear for its own account before the *Company* shall make payment under this policy. Sums recovered in respect of any *Loss* borne under the *Annual Aggregate Deductible* shall reinstate the latter by the same amount.

b) Buyer

Any entity named as the *Buyer* and all companies and other entities controlling, controlled by, or under common control with that entity, where control means ownership directly or indirectly of more than 50 percent of the voting share capital.

c) Company

Equinox Global Limited underwriting for and on behalf of certain underwriters named in the Schedule.

d) Credit Procedures

The representations made by the Insured to the *Company* that describe its credit management procedures. This includes the Credit Procedures Questionnaire and the Insured's credit manual on file with the *Company*.

e) Insolvency

Any of the following steps, or an equivalent step, has been taken by or against the relevant entity pursuant to the law of the country having jurisdiction over the entity's affairs:

1. Bankruptcy or insolvency is adjudicated;
2. A court having jurisdiction approves a compromise, composition or similar arrangement of debts on the basis of a receiving order; or the entity makes a valid assignment, composition or similar arrangement for the benefit of all creditors;
3. The appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the entity or any of its assets;
4. A court having jurisdiction orders the winding up or the liquidation of the entity; or an effective resolution is passed for the voluntary winding-up or liquidation of the entity;
5. Circumstances exist which in the *Company's* opinion are equivalent to one of the above.

f) Loss

The amount owing to the Insured from the *Buyer*, less any amount which the Insured or the *Buyer* are entitled to credit to the *Buyer's* account by way of set off, counterclaim or otherwise, less any sales or value added tax the Insured saves as a result of the non-payment, and less any interest accruing after due date.

Any amount owing to the Insured below the amount of the *Non Qualifying Loss* shall not qualify as a *Loss* (or be applied to the *Annual Aggregate Deductible*) for the purposes of this policy. However, if a given *Loss* would have exceeded the amount of the *Non Qualifying Loss* except that the *Shipments* took place in two consecutive *Policy Periods*, then it will be deemed that all the *Shipments* took place within the *Policy Period* in which the majority by value were made.

g) Policy Period

The period this policy is in force, as specified in the Schedule. This policy shall apply to all *Shipments* made to the Insured's *Buyers* within the *Policy Period*.

h) Recoveries

All sums whatsoever received, recovered or realised after the date the *Company* pays a claim, whether by the Insured, by any person acting on the Insured's behalf or by the *Company* in relation to the *Loss*.

i) Shipment

The sale of goods or services. *Shipment* shall be deemed to be made when goods are placed irretrievably en route to the *Buyer*. In the case of services *Shipment* shall deem to be made when each invoice for services performed is submitted to the *Buyer*.

j) Waiting Period

The number of days that must elapse after the due date before a *Loss* under this policy is deemed to have occurred. In the case of the *Buyer's Insolvency*, the end of the *Waiting Period* shall be immediately upon the due date of payment or the date of Insolvency, whichever is later. In all other cases, the *Waiting Period* shall be 180 days from the due date of payment.

k) Items in Italics

Items in italics which are not defined above are defined in the Schedule.

3. Credit Limits

The Insured must have a *Credit Limit* for every *Buyer*.

a) Discretionary Credit Limits

The Insured may set its own written *Credit Limit* up to the amount specified as the *Discretionary Credit Limit* in the Schedule. *Discretionary Credit Limits* must be set in accordance with the Insured's *Credit Procedures*.

b) Credit Limits Endorsed by the Company

Above the amount of the *Discretionary Credit Limit*, a *Credit Limit* will not be in place unless endorsed by the *Company* to this policy. Any *Credit Limit* endorsed by the *Company* will override any *Discretionary Credit Limit* set by the Insured on the same *Buyer*. *Credit Limits* endorsed by the *Company* may vary any provision of this policy.

4. Limits of Liability

a) The Credit Limit

When calculating a claim, the amount of *Loss* included shall not exceed the *Credit Limit* for the *Buyer*.

b) The Country Limit

The maximum amount the *Company* will pay in relation to all *Losses* with *Buyers* in a given country shall be the *Country Limit* stated in the Schedule.

c) Policy Limit

The maximum amount the *Company* will pay in relation to all *Losses* for the *Policy Period* shall be the *Policy Limit* stated in the Schedule.

5. Exclusions

a) Failure by the Insured

Any *Loss* caused by any failure by the Insured or by any of its agents to fulfil any of the terms of its contract with the *Buyer* or to comply with the provisions of any law, or caused by *Insolvency* of the Insured.

b) Import and export licences

Any *Loss* caused by a failure to obtain any export or import licence or other authorisation necessary for the performance of the Insured's contract with the *Buyer*, unless the necessity arose after the date of *Shipment*.

c) Third countries

Any *Loss* arising directly as a result of an event occurring in a country other than the *Buyer's* country, unless the third country is approved in the Schedule.

d) Disputes

As provided for in paragraph 6 k) any *Loss* in relation to any amount which is the subject of an unresolved dispute between the Insured and the *Buyer*.

e) Stop Shipment

Any *Loss* in relation to any transaction where, on the date of *Shipment*:

- any amount is overdue from the *Buyer* beyond the expiry of the *Stop Shipment Period* (other than an amount which is subject to a dispute which the Insured has acknowledged)
- the Insured was aware of any circumstance which might reasonably be expected to result in a *Loss*.

f) Radioactive contamination

Any *Loss* directly or indirectly caused by, contributed to by or arising from the ionising, radioactive, toxic, explosive or other hazardous or contaminating properties or effects of any explosive nuclear assembly or component thereto, nuclear fuel, combustion, or waste.

g) War between the five great powers

Any *Loss* arising directly or indirectly from war (whether before or after the outbreak of hostilities) between any of the following: China, France, the United Kingdom, the Russian Federation and the United States of America.

h) Non conforming transactions

Any transaction which falls outside the parameters described in the Schedule.

i) Sales to affiliates

Any sales to the Insured's affiliates or subsidiaries, unless the Insured has disclosed the relationship to the *Company* and the *Company* has specifically agreed a *Credit Limit* on the *Buyer* acknowledging the relationship.

6. Obligations of the Insured

a) Disclosure

At all times, including but not limited to, initial placement or renewal of the policy and when applying for *Credit Limits* and *Country Limits* the Insured must disclose all material facts and all representations must be materially accurate.

b) Legally enforceable indebtedness

For all *Shipments*, the Insured must establish an indebtedness that is legally enforceable (when created) in the *Buyer's* country and use its best endeavours to maintain enforceability.

c) Due care and diligence

The Insured must use due care and diligence and take all reasonable and customary measures to prevent or minimise loss at all times during the Policy. This includes ensuring all rights against the goods, *Buyer* and third parties are properly preserved and exercised, including the institution of legal proceedings against the *Buyer* or any guarantor. The Insured must also take any other measures which may be required by the *Company*.

d) Controlling credit extensions

The Insured may grant one extension of due date up to the end of the *Maximum Extension Period*, provided that the payment instrument is not a bill of exchange, promissory note, letter of credit or documentary sight draft. Otherwise the Insured may not accelerate, reschedule or change the due date without the *Company's* written consent. Where the Insured grants an extension as above, the extended due date shall be considered to be the due date for the purposes of this policy.

e) Uninsured amounts

The Insured must retain for its account the portion of all losses that are not payable under this policy.

f) Report of sales

The Insured must provide an accurate report of its annual sales in respect of the business to which this policy applies within 30 days from expiry of the *Policy Period*.

g) Report of overdues

The Insured must provide a report within 20 days of the end of each calendar month showing, as at the month end, any undisputed amounts of more than the *Overdue Reporting Minimum* that are overdue from a *Buyer* by more than the *Stop Shipment Period*.

h) Adverse Information

The Insured must immediately notify the *Company* on becoming aware of any circumstance which might reasonably be expected to result in a *Loss*.

i) Stop Shipment and chronological allocation of payments

The Insured must not make further *Shipments* after becoming aware of a circumstance which might reasonably be expected to result in a *Loss*, without the *Company's* written permission.

The *Company* will not be liable for any loss arising from *Shipments* the Insured makes while a *Buyer* has amounts that have been outstanding for longer than the *Stop Shipment Period*. This will not apply where the outstanding amount is due to a dispute which the Insured has acknowledged.

If the Insured continues *Shipments* beyond these dates on an uninsured basis, even where the terms of payment are cash in advance, this could reduce the calculation of any *Loss*. For the purposes of calculating a *Loss*, all amounts received from a given *Buyer* (whether or not in respect of *Shipments* insured by the *Company*, and irrespective of any designation by the *Buyer*) shall be allocated in the chronological order of due dates.

j) Compliance with Credit Procedures

The Insured must comply with its *Credit Procedures* at all times, including without limitation:

- Verifying at the time of each new *Shipment* that the *Buyer* has the ongoing financial capacity to meet its payment obligations;
- Reassessing a *Buyer* that has previously been subject to an interruption of *Shipments* in accordance with paragraph 6 i), and which is now up to date with its payment obligation, before agreeing to any new *Shipment*;
- Establishing a *Discretionary Credit Limit*.

The Insured shall not make any material variation or amendment to its *Credit Procedures* without the prior written approval of the *Company*.

k) Disputes

If a dispute exists between the Insured and the *Buyer*, the Insured must settle the dispute or else establish that the amount owing is valid and legally enforceable in the *Buyer's* country. The *Company* shall not be liable for any such amount until this has occurred.

l) Invoicing period

The Insured must promptly submit its invoices to *Buyers* within the number of days indicated in the Schedule. For goods, this must be from the date of *Shipment* and, for services, from the date of completion of services for which the Insured is entitled to receive payment from the *Buyer*.

m) Providing information

The Insured must provide the *Company* with all information and documents connected with the risks insured hereunder that the *Company* may require.

7. Claims

The responsibility for proving a *Loss* under this policy and evidencing that all conditions, conditions precedent and obligations have been complied with shall at all times rest with the Insured.

a) Making a claim

The Insured must submit the claim, including with it all available supporting information, within 240 days of the due date of payment, otherwise the claim submission will not be accepted for consideration.

b) Written demand

At least 30 days before submitting a claim to the *Company*, the Insured must have made a formal written demand for payment of the amount owing from the *Buyer* and from each guarantor (if any).

c) When will the *Company* Make Payment?

Subject to the terms of this policy the *Company* will pay the claim no more than 30 days from the date of receipt of all information necessary to prove the *Loss*, or from the end of the *Waiting Period*, whichever is the later.

d) Subrogation

Upon payment of a claim, the *Company* shall be subrogated to all the Insured's rights of recovery against any person or organisation. The Insured must continue to take all steps which may be necessary, or which the *Company* may require, to effect recoveries. Upon request the Insured must assign and transfer to the *Company* its rights in connection with the *Loss*.

e) Costs and expenses

Where the *Company* has given prior agreement in writing for the Insured to incur an extraordinary expense in order to fulfil its obligations to minimise and recover a loss, the *Company* will contribute towards that expense. The *Company's* contribution will be proportionate to its liability for the *Loss*.

f) Recoveries

All *Recoveries* must immediately be remitted to the *Company* in full and without deduction. Until this remittance is made the Insured receives and holds *Recoveries* in trust for the *Company*. The *Company* shall be allocated the *Covered Percentage of Recoveries* up to an amount equal to the sum of (i) the amount it has paid for the *Loss* (ii) its contribution towards the Insured's costs and expenses (iii) the *Covered Percentage* of any interest recovered and (iv) the additional amount the *Company* would have paid but for the *Annual Aggregate Deductible*. From the sum so allocated the *Company* will retain funds up to the total of items (i) to (iii) and any balance will reinstate the *Annual Aggregate Deductible*. All further sums will be allocated to the Insured.

8. General Conditions

a) Assignment of policy rights

The Insured cannot assign this policy or any of its benefits without the *Company's* written consent.

b) Assignment of contract rights

If the right to receive payment from the *Buyer* has been assigned or charged to a third party, or is in any way encumbered, the *Company* will not be liable to make payment until the person in whose favour the assignment or charge has been made has given the *Company* a written undertaking that they will account to us for, and will not make any claim to the *Company's* proportion of the *Recoveries*.

c) Waivers

No variation or waiver relating to any term or condition of this policy shall be binding unless the *Company* has specifically agreed this in writing.

d) Conversion of currencies

Where the amount owing from a *Buyer* is denominated in any currency other than the *Policy Currency*, payment of any *Loss* will be made in the *Policy Currency* converted at the exchange rate (being the closing mid-point rate quoted in the London Foreign Exchange Market) on the date of *Shipment*.

e) Fraud

Any fraudulent conduct on the Insured's part in relation to this policy or a claim under it or to any transaction to which this policy applies, will render this policy void and the *Company* shall retain any premium paid.

f) Joint and several obligations

The obligations of the persons named as the Insured shall be joint and several and for avoidance of doubt the *Annual Aggregate Deductible* and all limits of any kind under this policy shall apply to these persons collectively.

A person who is not a party to this policy shall not have any rights under or in connection with this policy by virtue of the Contracts (Rights of Third Parties) Act 1999.

g) Conditions Precedent

The performance of the following provisions of this policy are conditions precedent to liability: Paragraphs 6a) – 6k) inclusive and 7b). Paragraph 6a) is in addition to any remedies which may be available under the Insurance Law Act 2015. Due payment of premium including any premium taxes within 60 days of due date is also a condition precedent to liability.

h) Cancellation

The Insured is not permitted to cancel this Policy. There shall be no cancellation or return premium for short interest, unless specifically agreed by the *Company* at inception. The *Company* is permitted to cancel this policy for non-payment of premium or in the event of the Insured's *Insolvency*. In the event of cancellation by the *Company*, the *Company* shall notify the Insured in writing stating when (not less than 10 days thereafter) the cancellation shall be effective. Upon cancellation this policy shall be void and no loss occurring thereafter shall be eligible for payment. The mailing of such notice shall be sufficient proof of notice.

i) Set off

The *Company* is entitled to set off any amount payable under this policy against any amount that is owing from the Insured to the *Company*, whether under this policy or otherwise.

j) Law and arbitration

This policy is governed by the laws of England and Wales. Any dispute arising in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. There shall be three arbitrators. The seat of arbitration shall be London. The language used shall be English.

k) Complaints

If the Insured should have any complaint about a general insurance related matter or about the *Company's* service generally, the Insured should write to the Complaints Officer, at the following address:

Equinox Global Limited
Sutherland House
3 Lloyd's Avenue
London
EC3N 3DS

After this action, if the Insured is still not satisfied with the way a complaint has been dealt with, the Insured may ask the Policyholder & Market Assistance Department at Lloyd's to review its case. The address is:

Policyholder & Market Assistance Department
Lloyd's Market Services
One Lime Street
London
EC3M 7HA
Telephone: 020 7327 5693

l) Sanctions

The *Company* shall not be deemed to provide cover and the *Company* shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision

of such benefit would expose the *Company* and/or the London Underwriters which it represents, their parent companies or their ultimate controlling entities to any sanction, prohibition, reporting obligation or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

m) Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

n) Non-Cumulative Credit Limits

All *Credit Limits* and *Country Limits* under this policy and any preceding, replacement or future policies are non-cumulative. There shall never be more than one *Credit Limit* in effect for any one *Buyer* nor more than one *Country Limit* in effect for any one country.

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