



Takaful Marine Cargo Agreement Document

What does Takaful mean?

Takaful can be translated to simply mean “joint guarantee” – a shared responsibility with the underlying characteristic of “sharing”. Thus, Takaful means shared responsibility, shared guarantee, collective assurance and a mutual undertaking.

Takaful cover offers an alternative source of cover protection with different investment objectives, an approach to surplus distribution and an oversight system with an ethical dimension. Importantly, the element of uncertainty and earning of interest is removed to make the product compliant with Shariah law and incorporate the common goal of providing reasonable financial security against unpredicted catastrophe, disaster or risk befalling one’s life and property.

Central to the concept is the belief that a contribution paid is intended as a donation that will help another who is in need. Therefore, all contributions paid by participants are invested in investments which do not bear interest and are aimed at community upliftment projects. Furthermore, any surplus declared from the Fund may be shared with participants (profit-sharing), rolled over for future years or given to charity.

The Waqf Fund

Purpose of the Waqf Fund

The purpose of the Fund is to grant a benefit to a participant who has suffered a loss or damage in accordance with the rules of the Fund and that the participant is a legitimate participant at the time of such a loss or damage.

Rules of the Waqf Fund

Your Takaful Participation Agreement contains the rules (terms, conditions and warranties) that form the basis of your participation in the Fund. These rules will apply to you for as long as you continue to participate in the Fund.

It is important that your Takaful Participation Agreement, your Statement of Cover and any endorsements are read together to avoid any misunderstanding or misinterpretation. Together they show which sections of the Takaful Participation Agreement apply to you and contain details of the cover you have chosen. You should also pay particular attention to the General Conditions and General Exclusions of your Agreement document.

Please make sure that your Takaful Participation Agreement meets your requirements. If it does not, please inform us immediately.

No promotional literature or advice booklets form part of your Takaful Participation Agreement.

Your Contribution to the Waqf Fund

By agreeing to participate in the Fund, you agree to:

1. Contribute the amount stipulated as tabarru' (voluntary contribution that cannot be taken back) into the Fund; and
2. Abide by the rules of the Waqf Fund.

All contributions made to the Fund become the property of the Fund and will be managed in accordance with the rules of the Fund as stipulated by the Shariah Advisory Committee.

Surplus of the Waqf Fund

Should a surplus be declared at the end of the financial year, it will be distributed in any one or more of the following ways as per the approval of the Shariah Advisory Committee:

1. To Participants
 - Participants may be entitled to a share of the surplus provided they have not received any benefits (claims or otherwise) from the Fund.
2. To Qualifying Islamic Institutions
 - A percentage of the surplus may be distributed to qualifying institutions and welfare organisations.
3. As a Fund Reserve
 - A percentage of the surplus may be retained as a reserve for future claims.
 - The initial Waqf corpus (start-up donations) will remain in the Fund and will not be distributed

Deficit in the Waqf Fund

Should there at any time be a deficit in the Fund, the trustees of the Fund may, at their discretion, request a loan from Bryte Insurance Company Limited to finance this deficit. This loan will be a "qard al hasan" benevolent loan that will be paid back using any future surpluses and/or income in the Fund.

Shariah Advisory Committee

To ensure that all products comply with Islamic law, the trustees of the Waqf Fund have appointed a Shariah Advisory Committee consisting of the following esteemed Ulema:

- Sheikh Tauha Karaan (Chairman)
- Mufti Yusuf Suliman
- Mufti Ahmed Suliman
- Mufti Ashraf Qureshi
- Mufti Zubair Bayat

Should you have any Shariah enquiries about your participation in the Fund, please address these to takaful.info@brytesa.com.

Our Agreement with you

This is an agreement between you and the Waqf Fund, administered by Bryte Takaful on behalf of Bryte Insurance Company Limited.

By accepting this Agreement, you:

- Accept the Waqf Fund and its Rules;
- Accept Bryte Takaful as the appointed trustees of the Waqf Fund; and
- Agree to contribute the amount stipulated in your Statement of Cover as a tabarru' (voluntary contribution) to the Waqf Fund.

Benefits and Contributions to the Waqf Fund

The purpose of your contribution is to enable the Fund to assist beneficiaries of the Fund. The Rules of the Fund govern the circumstances under which a benefit will be paid to you.

Our Commitment

1. To provide you with the highest level of service;
2. To provide you with an innovative range of Shariah compliant products; and
3. To pay claims fairly and promptly as stipulated in your Takaful Participation Agreement.

Queries and complaints

Should you have any query or complaints regarding your Takaful Participation Agreement, please address it to takaful.info@brytesa.com.

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Welcome to Bryte Takaful

Who we are

Takaful together with Bryte Insurance is the premier, proactive business risk specialist. Applying our unparalleled sector insights, proven expertise and foresight, we partner with customers and brokers to protect their business and improve their risk profile in Africa.

Misrepresentation, misdescription and non-disclosure

Misrepresentation, misdescription or non-disclosure in any material particular shall render voidable the particular item, section or sub-section of the agreement, as the case may be, affected by such misrepresentation, misdescription or non-disclosure.

Our agreement with you

This is an agreement between the *Participant* and Bryte and contains all the details of the cover we provide. This agreement is made up of:

- the agreement. It states what is covered, sets out the claims procedure, Exclusions and other terms and conditions of cover;
- the proposal which is the information *you* provide to us when applying for cover;
- the most current statement of cover issued by us. The *statement of cover* is a separate document unique to the *participant*. It includes any changes, Exclusions, terms and conditions made to suit the individual circumstances and may amend the agreement; and
- any other written changes advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the *statement of cover* are covered. Please keep this agreement in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Marine Cargo Takaful Cover

Subject to the prior payment of, or *your* agreement to pay, the contribution set out in the *statement of cover*, we agree to provide cover as set out in this agreement.

In issuing this agreement, we have relied on the information contained in the proposal form and/or any other information given by *you* or on *your* behalf.

1. The cover

We cover *you* for physical loss of or damage to the *subject matter covered*, liability or expense on conditions as set out in the *statement of cover*.

When the cover applies

The cover only applies to voyages that commence during the *period of cover* specified in the *statement of cover*, or during any subsequent period that we have accepted payment for.

2. Conditions of cover

2.1 Conditions of cover

The conditions of cover are as specified in this agreement, the *statement of cover* and attachments and any clauses referred to in the *statement of cover*, all of which are to be read together.

2.1.1 Any reference in the conditions of cover to Institute Clauses is to the clauses published by the International Underwriting Association of London current at the effective date of this agreement.

2.2 Basis of valuation

2.2.1 For shipments involving imports or exports the *subject matter covered* is agreed to be valued as stated in the *statement of cover*.

2.2.2 For transits commencing and terminating within the same country:

- a. when stated as invoice value in the *statement of cover* the agreed value is the invoice cost or value, plus any costs incidental to the *covered* transit that are not covered by the invoice; or
- b. if there is no invoice, the value is the market value or the cost, at the time of the commencement of the *covered* transit, of replacing the *subject matter covered* with similar goods of the same age and condition.

2.3 Limits on cover

Further to any limitations to the cover set out in the applicable conditions of cover, this cover is limited to the maximum limit of liability stated in the *statement of cover*.

2.4 Voyages

Voyage(s) to and from, as stated in the *statement of cover*, subject to the "Duration" clause contained in the relevant Institute Clauses stated in the *statement of cover*, excluding

- 2.4.1 to and from Angola, Democratic Republic of Congo, Rwanda and Burundi
- 2.4.2 countries subject to clause 7.11 Sanctions regulation.

3. Definitions

When used in this agreement, *statement of cover* or endorsements the following definitions will apply:

3.1 Participant, You, Your, Assured

Participant, you, your, Assured means the *Participant* as named in the *statement of cover* or as otherwise defined in the agreement.

3.2 Period of Cover

period of cover means the *period of cover* stated in the *statement of cover*.

3.3 Statement of cover

statement of cover means the *statement of cover* attaching to and forming part of the agreement, including any *statement of cover* substituted for the original *statement of cover*.

3.4 Subject matter covered

subject matter covered means the *covered goods* as stated in the *statement of cover*, including packaging and labels.

3.5 Terrorism

terrorism means any act(s) of any person(s) or organisation(s) involving:

3.5.1 the causing, occasioning or threatening of harm of whatever nature and by whatever means;

3.5.2 putting the public or any section of the public in fear;

in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of a political, religious, ideological or similar nature.

3.6 Hijack

The seizure of a commercial vehicle (airplane, ship, or truck) by force or threat of force.

3.7 Computer system

Computer system means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Participant or any other party.

3.8 Data

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

3.9 Data processing media

Data Processing Media means any property covered by this Agreement on which Data can be stored but not the Data itself.

4. Additional clauses

4.1 Location clause

Notwithstanding anything to the contrary contained in the agreement of cover Companies' liability in respect of any one accident or series of accidents arising from the same event in any one location shall not exceed double the 'limit of liability any one conveyance' or as stated in the *statement of cover*.

4.2 Acquired companies

This agreement will cover any company or entity formed or acquired by you during the *period of cover*. However, you must hold a controlling interest in the company or entity or must accept responsibility for its cover. In addition, you must:

4.2.1 inform us of the formation or acquisition within 30 days;

4.2.2 provide us with the same information in relation to the company or entity that you provided to us when applying for or renewing this agreement;

4.2.3 agree to any additional conditions relating to the cover in respect of the company or entity; and

4.2.4 pay any additional contribution we may charge.

4.3 Airfreight replacement (imports only)

If loss or damage occurs, to the *subject matter covered* while being imported, which is recoverable under this agreement, we will pay the cost of either returning the *subject matter covered* to the manufacturer for repair and return or replacing the *subject matter covered* or parts from the supplier by air, whether or not the *subject matter covered* was originally sent by air. Claims made under this clause are subject to the limit, as stated in the *statement of cover*, any one loss or occurrence in addition to the sum *covered*.

4.4 Brands

We will not sell or dispose of salvaged branded goods without *your* consent. If *you* do not give *your* consent we may retain the goods and their reasonable salvaged value will be deducted from the amount payable in respect of the claim.

4.5 Cargo ISM & ISPS forwarding charges

This cover is extended to reimburse *you* up to the limit of the sum *covered* for the voyage, for any extra charges properly and reasonably incurred in unloading, sorting and forwarding the *subject matter covered* to the destination to which it is *covered* following release from a vessel arrested, or detained at, or diverted to any other port or place (other than the intended port of destination) where the voyage is terminated due either to:

- 4.5.1 the vessel not being certified in accordance with the ISM & ISPS code; or
- 4.5.2 a current Document of Compliance not being held by her owners or operators as required under the Safety of Life at Sea (SOLAS) Convention 1974 as amended.

This clause, which does not apply to General Average or Salvage or Salvage Charges is subject to all other terms conditions and exclusions contained in the agreement.

4.6 Containers

This agreement will cover *your* legal liability for physical loss of or damage to general purpose I.S.O. fully enclosed containers and/or flatracks in *your* care, custody and control to the limit, as stated in the *statement of cover*, any one loss or occurrence in addition to the sum *covered*.

4.7 Container demurrage charges

This agreement will cover demurrage charges and/or late penalties assessed against *you* for the late return of containers when they are retained by *you* on our instruction for inspection following a claim to the maximum limit as stated in the *statement of cover*, any one loss or occurrence in addition to the sum *covered*.

The period for which we will be liable begins at the time we instruct *you* to retain the containers and finishes at the time our surveyor instructs *you* to return the containers.

4.8 Debris

This agreement covers the cost of removal and disposal of damaged, deteriorated or contaminated *subject matter covered* and of cleaning and decontamination to the limit as stated in the *statement of cover*, any one loss or occurrence in addition to the sum *covered*.

4.9 Deck cargo

If the *subject matter covered* is shipped on deck of vessels other than in general purpose I.S.O. fully enclosed containers it is *covered* according to the conditions stated in the *statement of cover* but excluding loss, damage or expense caused by or arising from rust, oxidation, discolouration, fresh water or sea water unless as a result of a peril *covered* by the Institute Cargo Clauses (B) with sub clause 1.2.3 deleted.

4.10 Delayed unpacking

In the case of delay in opening cases, packages or containers (except those showing signs of damage, wetting or staining) loss or damage discovered when they are opened within 90 days of delivery will be treated as having happened during an *covered* transit unless there is evidence to the contrary.

4.11 Difference in coverage

When the *subject matter covered* is purchased on CIF or similar terms this agreement will cover the difference in the agreement conditions of the cover arranged by the seller or their agents and the cover provided by this agreement provided such difference has arisen from fault or neglect of the seller or their agents complying with *your* instructions. Consignments coming within the terms of this extension will be valued and declared in accordance with the agreement conditions. Claims recoverable under this clause are subject to the following provisions:

- 4.11.1 *you* should protect and pursue all legally enforceable means to recover the full amount of the loss or damage from the seller in accordance with the terms of purchase before claiming on this agreement;
- 4.11.2 *you* should give to us all rights and remedies in respect of any recourse *you* may have for such loss or damage; and
- 4.11.3 *you* should cooperate in all aspect of the recovery.

The existence of this clause should not be disclosed to the seller or any other interested party.

4.12 FOB Pre-shipment (imports only - not available for bulk cargo)

Notwithstanding the provisions of the agreement of sale, where the *subject matter covered* is purchased, for import, on an FOB, CFR or similar basis, provided such *subject matter covered* is not bulk cargo, this cover attaches from the time the *subject matter covered* is first moved in the warehouse or at the place of storage (at the place named in the agreement of cover) for the purpose of immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit.

In the event of payment under this agreement, we are entitled to subrogation of *your* rights of recourse against the sellers. *You* must not disclose the existence of this clause to the seller or any other interested party.

4.13 General average and salvage

For the purpose of claims for General Average contribution and Salvage Charges the *subject matter covered* shall be deemed to be covered for its full contributory value.

4.14 Labels

In the event of loss or damage to labels or wrappers caused by a *covered* peril, we will not be liable for more than the cost of new labels, capsules or wrappers and the cost of re-labeling and repacking but only up to the *covered* value of the *subject matter covered*.

4.15 Re-consigned or re-shipped

Subject to the terms and conditions of this agreement where the *subject matter covered* has been *covered* to a named port and is re-consigned or re-shipped direct from the wharf to ports within South Africa, the cover continues until final destination without payment of extra contribution or prior notification.

4.16 Sealed containers

Claims for theft, shortage or non-delivery of a whole package or item shipped in a container will not be invalidated solely because the seals appear intact on delivery, provided we are given:

- 4.16.1 documentary evidence the package or item was loaded into the container; and
- 4.16.2 copy of the discharge tally sheet or claused delivery notes, to substantiate the loss.

4.17 Sellers interest (export only)

This extension will only apply to *subject matter covered* that is exported if, under an agreement" of sale, *you* do not have a responsibility to arrange cover up to final destination and *you* make a provisional declaration of all such exports of *subject matter covered* within the voyage range of this agreement at the commencement of each *period of cover* for which sellers interest contribution is charged.

4.17.1 Full cover will apply if title reverts to you because the buyer fails to:

- a. accept the *subject matter covered*;
- b. take up the documents of title; or
- c. pay for the *subject matter covered*,

and you exercise a right or lien to interrupt the transit and/or suspend the agreement of sale in order to protect your interests.

4.17.2 Cover will remain in force until either:

- a. the *subject matter covered* is accepted by the buyer;
- b. the *subject matter covered* is sold to an alternative buyer;
- c. the *subject matter covered* is returned to you; or
- d. 60 days from the arrival of the overseas vessel at the port of discharge, whichever first occurs.

4.17.3 We will not pay for loss or damage to the *subject matter covered*:

- a. unless immediate notice is given to us when a contingency in 4.17.1 (a), 4.17.1 (b) and/or 4.17.1 (c) above occurs;
- b. if the existence of this extension is disclosed to the buyer, its companies or any other interested party;
- c. if this extension or any interest in the *subject matter covered* is assigned;
- d. if the loss is recoverable from credit companies;
- e. arising from government action and/or regulations preventing transfer of currency; or
- f. if you have not declared to us all exports of the *subject matter covered* within the voyage range of this agreement where you do not have a contractual responsibility to arrange or provide cover up to the final destination.

This extension is not a double cover. You must use all reasonable and usual care, skill and forethought and take all practical measures which may be required by us to prevent or minimise loss and to enforce the agreement of sale.

When a claim is paid under this extension we are entitled to exercise our right of subrogation as outlined in 'Rights of subrogation' clause in this agreement.

4.18 Shut out

In the event of the *subject matter covered* being 'shut out' from a vessel, this agreement extends to cover the *subject matter covered* while waiting on the wharf, quay or pier or for the transfer to and whilst at another wharf, quay or pier and onforwarding by another vessel, subject to you notifying us as soon as you become aware of such event.

4.19 Sorting charges

This agreement will cover costs incurred by you if you are instructed to separate shipping packages to ascertain the cause of loss or damage to the *subject matter covered*. These costs will be paid by us whether or not a claim under the agreement is paid.

4.20 First loss

In the event that the amount at risk in any one vessel, conveyance or location exceeds the limit applicable and the actual value has not been declared prior to attachment or prior to loss, accident or arrival, claims will be settled on a "first loss" basis up to the amount of the agreement limit.

5. Exclusions

The following exclusions apply in addition to the exclusions contained in the Institute clauses or stated elsewhere in the *statement of cover* and attachments to this agreement.

5.1 Demonstration, use or testing, under any process, return from exhibition

This agreement does not include cover for loss or damage to *subject matter covered* arising from demonstration; use or testing; under any process; return from exhibition.

5.2 Information technology hazards

This cover does not cover losses otherwise recoverable arising directly or indirectly out of loss of or damage to, or a reduction or alteration in the functionality or operation of, a computer system, hardware, programme, software, data, information repository, microchip, integrated circuit or similar device in or connected with computer equipment or non computer equipment whether *your property* or not unless the losses are caused directly by one or more of the following perils:

- 5.2.1 theft of equipment;
- 5.2.2 collision;
- 5.2.3 sinking, grounding or stranding of the carrying vessel;
- 5.2.4 overturning or derailment of land conveyance;
- 5.2.5 jettison or washing overboard;
- 5.2.6 fire, lightning, explosion;
- 5.2.7 aircraft or vehicle impact;
- 5.2.8 falling objects;
- 5.2.9 windstorm, hail, tornado, cyclone, hurricane, earthquake, volcano, tsunami, flood, freeze or weight of snow.

5.3 Institute radioactive contamination, chemical, biological, bio-chemical and electromagnetic weapons exclusion clauses - USA/Canada endorsement

When the *statement of cover* states the Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause (RACCBE) is to apply, the inclusion of this clause in the agreement is material to our willingness to provide coverage at the quoted terms, conditions and rates. It is the intent of the parties to give maximum effect to RACCBE as permitted by law. In the event that any portion of RACCBE may be found to be unenforceable in whole or in part under the law of any state, territory, district, commonwealth or possession of the USA, or any province or territory of Canada, the remainder will stay under full force and effect under the laws of that state, territory, district commonwealth or possession, province or territory. Further any such finding will not alter the enforceability of the RACCBE under the laws of any other state, territory, district, commonwealth or possession of the USA, or any province or territory of Canada, to the fullest extent permitted by applicable law.

5.4 ISM

This agreement excludes loss, damage or expense where the *subject matter covered* is carried by a vessel that is not ISM & ISPS certified or whose owners or operators do not hold an ISM Code Document of Compliance when, at the time of loading of the *subject matter covered* on board the vessel, you are aware, or in the ordinary course of business should have been aware that either:

- 5.4.1 the vessel was not certified in accordance with the ISM Code; or
- 5.4.2 a current Document of Compliance was not held by its owners or operators as required under the Safety of Life at Sea (SOLAS) convention 1974 as amended.

This exclusion will not apply where this cover has been assigned to the party claiming under this agreement who had bought or agreed to buy the *subject matter covered* in good faith under a binding agreement.

5.5 Mechanical or electronic derangement

This agreement excludes mechanical, electrical or electronic breakdown or malfunction where there is no external evidence that a *covered* event has occurred.

5.6 Termination of transit (**terrorism**) 2009

This clause will be paramount and override anything contained in this agreement inconsistent therewith.

Notwithstanding any provision to the contrary contained in this agreement or the Clauses referred to, it is agreed that in so far as the agreement covers loss of or damage to the *subject matter covered* caused by any act of *terrorism* cover will terminate either:

- 5.6.1 as per the transit clauses contained within the agreement of cover;
- 5.6.2 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 agreement of cover;
- 5.6.3 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 agreement of cover, which *you* or *your* employees elect to use either for storage other than in the ordinary course of transit;
- 5.6.4 when *you* or *your* employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit;
- 5.6.5 in respect of marine transits, on the expiry of 60 days after the completion of discharge overside of the *subject matter covered* from the oversea vessel at the final port of discharge; or
- 5.6.6 in respect of air transits, on the expiry of 30 days after unloading the *subject matter covered* from the aircraft at the final place of discharge,

whichever occurs first.

If the agreement of cover or the Clauses referred to specifically provide cover for inland or other further transits following on from storage, or termination as provided for above, cover will re-attach and continue during the ordinary course of that transit terminating again in accordance with clause 5.6.1 to 5.6.6 above.

5.7 Terrorism

This agreement excludes any loss, damage, liability or expense arising from:

- 5.7.1 *terrorism*; and/or
- 5.7.2 steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, threatened, suspected or perceived *terrorism*.

However this exclusion will not apply to the extent of the provisions of exclusion clause 5.6.

5.8 Road vehicle conditions

The following conditions shall apply when subject matter is conveyed by vehicles operated by the *Participant*:

5.8.1 Unattended vehicle security clause

In no case shall this agreement cover loss or damage by theft, pilferage or any attempt thereat of the *subject matter covered*:

- 5.8.1.1 from open or tarpaulin covered vehicles, and related, unless a person(s) in lawful control of the *covered* property remains with the vehicle at all times and the theft, pilferage or attempt thereat is accompanied by violence or threat of violence on such person(s);
- 5.8.1.2 from other vehicles whilst left unattended unless following forcible and violent entry into the vehicle of which,
 - a. all points of access are securely closed and locked.

- b. any alarms and immobilisers are properly and adequately maintained and armed.
- c. the *covered* property is removed from sight.

5.8.2 Overnight security clause

Excluding theft or pilferage or any attempt thereat from road vehicle(s) whilst stopped overnight unless the vehicle is:

- 5.8.2.1 at a recognised and designated truck stop or
- 5.8.2.2 contained in a securely locked up garage or security compound and such theft or pilferage or attempt thereat follows actual forcible and violent entry into the vehicle or such garage or security compound.

5.9 Communicable Disease Exclusion

1. Notwithstanding any other provision of this agreement to the contrary, this agreement does not cover any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of, attributable to, resulting from, originating from, occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this exclusion, loss, damage, claim, cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:
 - 2.1 for a Communicable Disease, or
 - 2.2 any property covered hereunder that is affected by such Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
 - 3.1 the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - 3.2 the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - 3.3 the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property covered hereunder.
4. This exclusion applies to all coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).
5. All other terms, conditions and exclusions of the agreement remain the same. If the Company alleges that by reason of this exclusion, any loss, damage or liability is not covered by this Agreement the burden of proving the contrary rests on the Participant.

5.10 Property Cyber and Data Exclusion

1. Notwithstanding any provision to the contrary within this Agreement or any endorsement thereto this Agreement excludes any:
 - 1.1 Cyber Loss;
 - 1.2 loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Data, including any amount pertaining to the value of such Data;

regardless of any other cause or event contributing concurrently or in any other sequence thereto.

2. In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
3. This exclusion supersedes and, if in conflict with any other wording in the Agreement or any endorsement thereto having a bearing on Cyber Loss or Data, replaces that wording

Definitions

4. Cyber Loss means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident.
5. Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
6. Cyber Incident means:
 - 6.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
 - 6.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
7. Computer System means:
 - 7.1 any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Participant or any other party.
8. Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

6. Claims conditions

6.1 Claims procedure

When loss or damage happens which may give rise to a claim under this agreement, *you* and/or *your agent* should take all reasonable measures to avert or minimise the loss and ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised. *You* and/or *your agent* must:

- 6.1.1 give written notice to the company after becoming aware of a potential claim as follows:
 - 6.1.1.1 theft, armed robbery and hijacking = within 48 hours
 - 6.1.1.2 any other claim = within 30 days
- 6.1.2 claim immediately on the carriers, port authorities or other bailees for any missing packages;
- 6.1.3 in no circumstances, other than under written protest, give clean receipts where goods are in damaged or doubtful condition;
- 6.1.4 in no circumstances, other than under written protest, sign a receipt for goods which are in damaged or doubtful condition without noting the damage or doubt regarding the condition on that receipt;
- 6.1.5 apply immediately for survey by carriers' or bailees' representatives if any loss or damage is apparent and claim on the carriers or bailees for any loss or damage found during the survey;

- 6.1.6 give notice, in writing, to the carriers or bailees within 3 days of delivery if the loss or damage was not apparent at the time of taking delivery; and
- 6.1.7 immediately notify us, or our nominated survey/settling agent, what has happened and promptly send full details including details of any other cover on the *subject matter covered* and the following documentation:
 - a. original or copy of shipping invoices, shipping specifications and/or weight notes;
 - b. original bill of lading, waybill and/or other agreement of carriage;
 - c. landing account and weight notes at final destination;
 - d. documentary evidence of the extent of the loss or damage; and
 - e. any correspondence with the carrier or bailee about their liability for loss or damage;
 - f. all other documentation deemed necessary by the claims department.
- 6.1.8 not authorise any repairs to the *subject matter covered* without our consent.

6.2 Excess

In the event of a claim (other than a claim for total loss, General Average or Salvage) you must bear first the amount of any excess specified in the *statement of cover* or elsewhere in the agreement.

6.3 Other cover

When making a claim on this agreement you must also supply us with written details of all agreements that may pay or partially pay that claim.

6.4 Rights of subrogation

We are entitled to exercise any rights you or any assignee may have against anyone else in relation to the *subject matter covered* for which we have settled a claim under this agreement. You, or anyone else entitled to claim under this agreement, must cooperate fully with us in exercising those rights and must give us any information or assistance we may require.

6.5 Apportionment of recoveries clause

It is hereby understood and agreed that where recovery is obtained from a carrier or other third party such recovery shall be apportioned between the *assured* and the underwriters in the same proportion as the respective parties hereto have borne the loss.

6.6 Incoterms

It is important to note that, in case of claims, consideration will be given to the terms of the Agreement of Sale as per Incoterms.

7. General conditions

7.1 Arbitration clause

The Company may elect that any dispute as to the amount of liability under the Agreement shall be determined by arbitration in and in accordance with the laws of the Republic of South Africa.

7.2 Law, practice and jurisdiction

This agreement is subject to English law and practice, and South African jurisdiction.

7.3 Cancellation

This agreement may be cancelled by either the *Participant* or the Company giving notice of cancellation in writing as prescribed hereunder. Such cancellation shall become effective at midnight of the day on which such notice expires but shall not apply to any cover which shall have attached prior to expiry of notice.

- 7.3.1 War Risks – as per Institute War Cancellation Clause;

7.3.2 Strikes Risks (except for voyages to or from the United States of America where 48 hours notice shall apply) – 7 days.

7.3.3 All other risks covered by this Agreement – 30 days.

7.4 Notification of material change

You must notify us as soon as possible of any material change in the risk covered by this agreement.

7.5 Plurals and titles

The proposal, this agreement, the *statement of cover* and any endorsements are one agreement in which, unless the context otherwise requires:

7.5.1 headings are descriptive only, not an aid to interpretation;

7.5.2 singular includes the plural, and vice versa; and

7.5.3 the male includes the female and neuter.

7.6 VAT

The Company will settle claims as per agreement terms and conditions applicable plus VAT where the *Participant* is obliged to pay such in terms of the South African Legislation current at time of settlement.

7.7 The Standard S.A.I.A. Exceptions

Applicable to all storage risks within the Republic of South Africa outside the scope of cover granted by the Duration Clause (including any agreed increase in the number of stated days) in Institute Strikes Clauses.

- a. This agreement does not cover loss damage or liability directly or indirectly caused by related to or in consequence of:
 - i. civil commotion labour disturbances riot strike lock-out or public disorder or any act or any activity which is calculated or directed to bring about any of the above.
 - ii. war invasion act of foreign enemy hostilities or warlike operations (whether war be declared or not) or civil war:
 - iii.
 - a. mutiny military rising military or usurped power martial law or state of siege or any other event or cause which determines the proclamation or maintenance of martial law or state of siege.
 - b. insurrection rebellion or revolution.
 - iv. any act (whether on behalf of any organisation body or person or group of persons) calculated or directed to overthrow or influence any State or government or any provincial local or tribal authority with force or by means of fear *terrorism* or violence.
 - v. any act which is calculated or directed to bring about loss or damage in order to further any political aim objective or cause or to bring about any social or economic change or in protest against any State or government or any provincial local or tribal authority or for the purpose of inspiring fear in the public or any section thereof.
 - vi. any attempt to perform any act referred to in clause (iv) or (v) above.
 - vii. the act of any lawfully established authority in controlling preventing suppressing or in any other way dealing with any occurrence referred to in clauses (i)(ii)(iii)(iv)(v) or (vi) above.

If the Company allege that by reason of Clauses (i)(ii)(iii)(iv)(v)(vi) or (vii) of this Exception loss damage or liability is not covered by this agreement the burden of proving the contrary shall rest on the *Participant*

- b. This Agreement does not cover loss or damage caused directly or indirectly by or through or in consequence of any occurrence for which a fund has been established in terms of the War Damage Insurance and Compensation Act 1976 (No 85 of 1976) or any other similar Act operative in any of the territories to which this Agreement applies.

7.8 Contribution and adjustments

You must pay us the deposit contribution stated in the *statement of cover*. This is based on estimated figures for the *period of cover* provided by you and you must keep accurate records of the equivalent actual figures. A statement of these actual figures (audited if requested) must be given to us within one month after the end of the *period of cover*.

We will adjust the contribution upwards at the end of that period on the basis of *your* actual figures. If the adjusted contribution is higher than the deposit contribution stated in the *statement of cover* you must pay us the difference. If the adjusted contribution is lower than the deposit contribution stated in the *statement of cover*, no refund will apply.

7.9 Reasonable care

You must take reasonable care to prevent loss, destruction, damage or death covered by this agreement.

7.10 Fraud

If any claim under this agreement be in any respect fraudulent, or if any fraudulent means or devices be used by the Participant or anyone acting on his behalf to obtain any benefit under this Agreement, or if any accident, loss, destruction, damage or liability be occasioned by the wilful act or with the connivance of the Participant, all benefits under the claim shall be forfeited and the agreement will be cancelled.

7.11 Sanctions regulation

Notwithstanding any other terms under this agreement, no company shall be deemed to provide coverage and will make any payments provide any service or benefit to any *participant* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *participant* would violate any applicable trade or economic sanctions, law or regulation.

7.12 Third parties

If anyone else is entitled to make a claim under this agreement, that person and/or entity must also comply with its terms.

7.13 Compliance

This agreement is subject to the *participant* complying with all the laws and regulations pertaining to the *participants* business.

7.14 Cancellation

This agreement or any section may be cancelled by the company giving 31 days' notice in writing (or such other period as may be mutually agreed). The Participant can cancel the agreement with immediate effect.

On cancellation by the Participant, the company shall be entitled to retain the customary short period or minimum contribution for the period the agreement or section has been in force, unless cooling-off rights apply. On cancellation by the company, the participant shall be entitled to claim a pro-rata proportion of the contribution for the remainder of the period of cover from the date of cancellation.

7.15 Amendments to terms and conditions

Bryte/the Company (align to agreement language) may, at its discretion and on providing you with 31 days written notice to your Business's nominated email address, make changes to the terms and conditions of this Agreement, as and when it deems necessary.

7.16 Protection of personal information

We at Bryte, respect your constitutional right to privacy. We are committed to and bound by the terms and provisions of the Protection of Personal Information Act 4 of 2013 (“POPI”) regarding the acquisition, usage, retention, transmission and deletion of your personal information. We will check and validate the information you provide through legal means. We have high level security measures in place to protect your personal information. Your personal information herein collected is for the primary purpose of providing you with cover and for all other activities and processes incidental to and relevant to this purpose. Your information shall be kept confidential, however, we shall disclose it to certain third parties as required and other Companies for the specific purpose of cover and to reduce and prevent any form of fraudulent activity. Sharing of information includes, but is not limited to, information sharing as arranged via the South African Insurance Association. You hereby give consent and fully understand the reason for Bryte to process, use, share and retain your personal information for its designated purpose and you confirm the accuracy of the information. You may request Bryte to amend, update, change or correct your personal information processed by us by sending a request to your broker or your nearest Bryte offices

For a full version of the Consent to process Personal Information is available on this link for download (https://www.brytesa.com/pdf/Consent_to_Process_Personal_Information.pdf)

Should you decide to cancel this cover agreement you further consent to Bryte retaining the information in line with the legally permitted retention period, for statistical and reporting purposes only. Should you decide not to accept the proposal, the information collected, will be de-identified and only used for statistical and research purposes

8. Institute Clauses

INSTITUTE CARGO CLAUSES (A) - Applicable only if indicated in the statement of cover

INSTITUTE CARGO CLAUSES (B) - Applicable only if indicated in the statement of cover

INSTITUTE CARGO CLAUSES (C) - Applicable only if indicated in the statement of cover

INSTITUTE CARGO CLAUSES (AIR) - Applicable only if indicated in the statement of cover

INSTITUTE FROZEN FOOD CLAUSES (A) - Applicable only if indicated in the statement of cover

INSTITUTE FROZEN FOOD CLAUSES (C) - Applicable only if indicated in the statement of cover

INSTITUTE FROZEN MEAT CLAUSES (A) –24 Hours Breakdown - Applicable only if indicated in the statement of cover

INSTITUTE FROZEN MEAT CLAUSES (C) and 24 Hours Breakdown - Applicable only if indicated in the statement of cover

INSTITUTE WAR CLAUSES (CARGO) - Not Applicable to transit on land and/or Institute Frozen Meat Clauses and/or Institute Frozen Food Clauses

INSTITUTE WAR CLAUSES (AIR CARGO) - Only Applicable if Institute Cargo Clauses (Air) is indicated in the statement of cover

INSTITUTE STRIKES CLAUSES (CARGO) - Not Applicable to Institute Frozen Meat Clauses and/or Institute Frozen Food Clauses

INSTITUTE STRIKES CLAUSES (AIR CARGO) - Only Applicable if Cargo Clauses (Air) is indicated in the statement of cover

INSTITUTE STRIKES CLAUSES (FROZEN FOOD) -Only Applicable if Institute Frozen Food Clauses (A) or (C) is indicated in the statement of cover

INSTITUTE STRIKES CLAUSES (FROZEN MEAT) - Only Applicable if Institute Frozen Meat Clauses (A) or (C) is indicated in the statement of cover

INSTITUTE CLASSIFICATION - Applicable to all seafreight shipments

INSTITUTE RADIOACTIVE CONTAMINATION, - CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND

ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE - Applicable to all shipments

INSTITUTE WAR CANCELLATION CLAUSE (CARGO) - Applicable to all shipments

INSTITUTE CYBER ATTACK EXCLUSION CLAUSE - Applicable to all shipments

INSTITUTE MALICIOUS DAMAGE CLAUSE - Applicable to all shipments

INSTITUTE REPLACEMENT CLAUSE - Applicable to all shipments

INSTITUTE THEFT, PILFERAGE AND NON-DELIVERY - Applicable to all shipments

Notice supplied in addition to the Statutory Notice supplied with this Agreement

Cover agreements are legal agreement entered into between the Company (we/us) and the Participant (you/your). The Intermediary (broker) used by you, as your agent and in terms of the Financial Advisers and Intermediary Services Act (FAIS), is obliged to bring to your attention all aspects of the agreement that affect the coverage purchased, both the positive and negative aspects.

Definitions

To assist all concerned, and in particular you, we have produced/reproduced various definitions utilised by us that could affect you in your understanding of the cover provided by this Agreement in the General Definitions Section of the Agreement.

These definitions are not a comprehensive list of all those used in this Agreement, but we believe that they are of such a nature that we should bring them to your specific attention.

There are other definitions used in this Agreement but we are confident that the broker is fully aware of definitions used in the South African Business insurance market upon which this Agreement has been based.

These definitions do not necessarily appear in this Agreement in the same order as they are listed.

Should you require any additional information, or explanation, as to the application of these definitions, or any aspect of this Agreement, it is recommended that you contact the broker that arranged this Agreement on your behalf.

However, we are always available to assist you should the need arise.



Contact

Registered Address

15 Marshall Street, Ferreirasdorp,
Johannesburg, 2001, South Africa

T +27 (0) 11 370 9111
www.brytesa.com

Postal Address
PO Box 61489, Marshalltown, 2107

Bryte Insurance Company Limited

A Fairfax Company

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