Attachment

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**Oil Pollution Indemnity Clause for penalties and fines**

1. Subject to the terms of this Charterparty, as between Owners and Charterers, in the event of an oil pollution incident involving any discharge or threat of discharge of oil, oily mixture, or oily residue from the Vessel (the “Pollution Incident”), Owners shall have sole responsibility for responding to the Pollution Incident as may be required of the vessel interests by applicable law or regulation.
2. Without prejudice to the above, as between the parties it is hereby agreed that:
3. Owners shall indemnify, defend and hold Charterers harmless in respect of any liability for criminal fine or civil penalty arising out of or in connection with a Pollution Incident, to the extent that such Pollution Incident results from a negligent act or omission, or breach of this Charterparty by Owners, their servants or agents,
4. Charterers shall indemnify, defend and hold Owners harmless in respect of any liability for criminal fine or civil penalty arising out of or in connection with a Pollution Incident, to the extent that such Pollution Incident results from a negligent act or omission, or breach of this Charterparty by Charterers, their servants or agents,

provided always that such fine or penalty has not been imposed by reason wholly or partly of any fault of the party seeking the indemnity and that the law governing the charterparty does not prohibit recovery of such fines.

1. Nothing in this clause shall prejudice any right of recourse of either party, or any defences or right to limit liability under any applicable law.
2. Charterers shall procure that this Clause be incorporated into all sub-charters and contracts of carriage issued pursuant to this Charterparty.

**Explanatory Notes**

It is understood that under the revised Australian law, charterers can be strictly liable for penalties and fines imposed on them, as a result of a pollution or threat of pollution caused by the act or negligence of the owner (e.g. navigational error). Conversely owners can be strictly liable for penalties and fines imposed on them, as a result of a pollution or threat of pollution caused by the act or negligence of the charterer (e.g. unsafe berth). As this involves circumstances beyond owners’ and charterers’ control, a charterparty clause is recommended to achieve the effect that whoever causes the Pollution Incident should bear the criminal fines or penalties through indemnification.

Under the clause owners have overall responsibility for responding to a discharge or threat of discharge of oil, oily mixture or oily residue (subparagraph (a)). This is in line with the Australian legislation and with the international compensation regime.

Further, the indemnity in subparagraph (b) is designed to protect owners and charterers by incorporating an equal indemnity by the party whose negligent act or omission, or breach of the charterparty, causes pollution or threat of pollution. Where the pollution or threat of pollution is entirely caused by a third party’s act, without involving any act of the owner or of the charterer, but the owner or charterer still incurs the penalty/fine under the new Australian law, the indemnity in this clause will not respond to such a situation.

The clause only addresses the specific situation of criminal fines and civil penalties, not civil liability which is within the sphere of the Conventions.

Any right of recourse of either party, defences or right to limit is preserved under subparagraph (c).

Subparagraph (d) is designed to ensure that the same recovery and indemnity provisions apply where there is a charterparty chain.