

# Commercial insurance contract wording

## P21: October 2013 edition

### Web update 1: 4 November 2014

Please note the following updates to your copy of the October 2013 edition of the **P21: Commercial insurance contract wording** study text:

#### Chapter 1

##### Section C1, London Market Group, page 1/14

Final paragraph – replace with the following:

In 2014, the LMG announced that it would be expanding its remit to focus on **all** issues that affect the competitive position of the London market. So, whilst continuing work on operational reforms, new market-wide initiatives will include work to develop talent, promote diversity and to co-ordinate a common voice for the market in its dealings with Government and regulators. It will also commission research to enable it to understand its customers better and to identify ways to enhance the market's attraction.

##### Section C4, London and International Brokers' Association, page 1/15

3rd paragraph, 1st line – amend to read as follows:

The Association's key priorities include:

##### Section D1B, Prudential Regulation Authority (PRA), page 1/19

Add the following paragraph immediately below the table:

The **Financial Services (Banking Reform) Act 2013** gave the PRA a secondary objective *to facilitate effective competition*. This objective only applies when the PRA is advancing its primary objectives and means that the PRA must be mindful of the likely competition effects of its actions.

##### Section D1D, Lloyd's, page 1/20

Final paragraph – amend to read as follows:

Accordingly, the MOU provides that the FCA and the PRA will maintain co-ordination arrangements with Lloyd's in support of their activities; these arrangements were agreed in June 2013.

#### Chapter 2

##### Section C2, General Underwriters Agreement (GUA), page 2/6

2nd paragraph, 1st sentence – amend as shown in bold type:

As detailed in the LMP 'Introduction to GUA', dated **February 2014**, the purpose of the GUA is to...

##### Appendix 2.1, The General Underwriters Agreement, pages 2/17–2/25

Pages 2/17 to 2/25 of this appendix should be replaced with the pages included in this update.

## Chapter 3

### Section B1C, The Law Commission and Consumer Insurance (Disclosure and Representations) Act 2012, page 3/8

1. Delete the final two sentences beginning 'The Law Commission has...' and replace with the following paragraph:

The **Insurance Bill 2014–15**, published by the Law Commissions in July 2014, has a provision to abolish basis of contract clauses in business insurance contracts. At the time of writing (November 2014), this bill is going through the parliamentary process and you are advised to monitor its progress.

2. Useful websites

Add a new website as follows:

<http://services.parliament.uk/bills/2014-15/insurance.html>

## Chapter 4

### Section C6B, Losses occurring (or occurrence), page 4/12, Be aware box, final line

Please amend the website address for the *Bolton MBC v. Municipal Mutual Insurance* case as follows:

[http://archive.onlinedmc.co.uk/bolton\\_mdc\\_v\\_mmi\\_\(cofa\).htm](http://archive.onlinedmc.co.uk/bolton_mdc_v_mmi_(cofa).htm)

## Chapter 7

### Section B3A, Currency conversion clauses, page 7/7, Question 7.1

Please amend the second sentence to read as shown in bold type:

There is an excess of loss reinsurance contract with a deductible of \$800,000 million **and the rate of exchange is £1 = \$2.**

## Chapter 8

### Appendices, page 8/128 onwards

Please add new appendix 8.8 with the pages included in this update.

## Appendix 2.1: The General Underwriters Agreement

### The General Underwriters Agreement

Version 2.0  
February 2014

This document includes:

- An Introduction to the GUA
- The GUA Clause (Schedules published separately)



# Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

## Table of Contents

1	Document Revision/Change History.....	<b>3</b>
2	Introduction .....	<b>4</b>
2.1	Context .....	4
2.2	Objectives .....	4
2.3	Purpose of the GUA .....	4
2.4	The GUA in outline.....	5
2.5	Benefits provided by the GUA.....	6
2.6	Future development.....	6
2.7	Further Information .....	6
3	General Underwriters Agreement – February 2014.....	<b>7</b>
1.	Application .....	7
2.	Definitions .....	7
3.	Alterations.....	8
4.	Evidence of Agreement.....	8
5.	Effective date of agreement .....	9
6.	Administration .....	9
7.	Slip Leader/Agreement Party replacement.....	10
8.	Withdrawal or Termination of Delegated Authority .....	10
9.	Rights of Third Parties .....	11
10.	Terms of the Slip.....	11
11.	Choice of Law .....	11

# Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

## 1 Document Revision/Change History

Version	Date	Description of Change
1.0	October 2001	First Release
1.1	February 2002	Amendments made to the Marine Cargo, Marine Hull and Marine Liability schedules: 3.3.1 Increases the monetary exposure <ul style="list-style-type: none"> <li>• 10% tolerance deleted</li> </ul> 3.3.4 Extensions to policy period <ul style="list-style-type: none"> <li>• Stipulation of within one calendar month deleted</li> </ul>
1.2	May 2002	Amendments made to the Marine Hull schedule based on feedback from the Joint Hull Committee
1.3	October 2002	Amendments made to the Excess of Loss and Treaty Reinsurance Schedule based on feedback from the LMA and LMBC Reinsurance committees.
1.4	June 2003	Amendments made to the Marine Cargo and Marine Energy schedules based on feedback from the Joint Cargo Committee, Joint Rig Committee. Also includes the new Political Risks schedule.
1.5	August 2004	Amendments made to the Marine Liability schedule as agreed by the Joint Liability Committee and the LMBC ( <i>now LIIBA</i> ) Marine Executive Committee. The name of the schedule has been changed from the Marine Liability schedule to just the Liability schedule, although it is still intended only for Marine Liability and incidental Non-Marine business rather than pure Non-Marine Liability classes such as Professional Indemnity.
1.6	May 2005	New schedule for Professional Indemnity business published as agreed by LMBC ( <i>now LIIBA</i> ), LMA and the Professional Indemnity Forum (PIF).
1.7	January 2006	Amendments made to the Political Risks schedule based on feedback from the LMA Political Risks Business Panel.
1.8	December 2006	Addition of new Terrorism schedule based on a combination of the Non Marine and Political Risks schedules.
2.0	February 2014	New format of GUA documentation – with minor editing changes; Reference to electronic means of processing; drafting amendment to clause 1.2; no changes in substantive content i.e. to core GUA clauses or Schedules.

## Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

### 3 General Underwriters Agreement – February 2014

**CONDITION PARAMOUNT:** *Nothing in this General Underwriters Agreement (“GUA”) nor in the Class of Business Schedules (“Schedule/s”) referred to shall alter or detract from the several liability of the subscribing Underwriters. Each subscribing Underwriter’s obligations under the contract of insurance/reinsurance shall remain several and not joint and shall at all times be limited to the extent of his or its individual signed subscription (hereafter its own proportion).*

This GUA determines the basis upon which the specified slip leader and agreement parties for insurance and reinsurance risks to which this GUA is applied may act as agents of the other Underwriters subscribing to those risks, each for its own proportion severally and not jointly, in dealing with certain alteration(s), amendment(s) and additions (“Alterations”) to the contract of insurance or reinsurance evidenced by a slip, policy, certificate or otherwise.

#### 1. Application

1.1 This GUA may be applied to:

- 1.1.1 risks whether renewals or otherwise originally first subscribed on or after 1<sup>st</sup> February 2014 and
- 1.1.2 risks originally first subscribed prior to that date to the extent that each subscribing Underwriter thereon hereafter individually so agrees for its individual signed proportion.

and in each case shall apply only when the slip evidencing the contract of insurance or reinsurance (or in the case of Clause 1.1.2, the written endorsement to such a slip) (“the slip”) has both expressly incorporated this GUA and identified the applicable Class of Business Schedules.

- 1.2 In the event that the risk is written as a declaration to a lineslip marine open cargo cover or other contract for insurance or reinsurance, the GUA shall apply to the risk concerned only if incorporated in that lineslip, cover or other contract and in the resulting declaration, certificate or other form of contract of insurance or reinsurance.
- 1.3 In the event of a slip being subscribed by an Underwriter who is not amenable to the GUA applying to its individual signed proportion, and that Underwriter so indicates on the slip, this GUA shall not apply to effect any Alteration so far as that Underwriter and its proportion are concerned.

#### 2. Definitions

- 2.1 The “Slip Leader” is the Underwriter identified as such on the slip.
- 2.2 The “Agreement Parties” are those Underwriters identified as such on the slip. Where no such Underwriters are so identified, the Agreement Parties will be all Underwriters.
- 2.3 The “Other Underwriters” are all Underwriters not identified as the Slip Leader or as an Agreement Party, other than those to whom Clause 1.3 applies.
- 2.4 “Notification” or “listing” shall mean notification in writing and shall include notification given by electronic means (including ACORD Messaging, e-mail or other electronic means), provided always that, save in the case of Clause 8.2, notification identifies each risk concerned. “Notified” and “listed” shall be construed accordingly.

# Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

- 2.5 All references to “slip” in this document shall be taken to include any document evidencing a contract of insurance or reinsurance whether in the MRC format or in another format and whether on paper, in an electronic format or otherwise.
- 2.6 All references to “endorsement” in this document shall be taken to include any document evidencing an Alteration to a contract of insurance or reinsurance whether in the MRCE format or in another format and whether on paper, in an electronic format or otherwise.

### 3. Alterations

- 3.1 Only Alterations set out in the applicable Schedule Part 1 may be agreed by the Slip Leader alone on behalf of the Agreement Parties and Other Underwriters, each for its own individual signed proportion severally and not jointly.
- 3.2 Only Alterations set out in the applicable Schedule Part 2 may be agreed by the Slip Leader and Agreement Parties acting together on behalf of Other Underwriters, each for its own individual signed proportion severally and not jointly.
- 3.3 Such Alterations shall only be agreed by Slip Leader/Agreement Party itself or by members of its staff who have been specifically designated to assume such responsibility.
- 3.4 The Alterations set out in the applicable Schedule Part 3, and any Alteration that the Slip Leader and any Agreement Party so require, may be agreed only by all Underwriters, each for its own individual signed proportion severally and not jointly.

### 4. Evidence of Agreement

- 4.1 The Slip Leader shall incorporate the GUA Stamp (in either form A or B) in the endorsement, should it not be incorporated in or appear on the form of endorsement.

#### GUA Stamp A

<b>GENERAL UNDERWRITERS AGREEMENT (GUA)</b> Each Underwriter's proportion is several not joint		
Slip Leader Only  Box 1	Slip Leader And Agreement Parties  Box 2	All Underwriters  Box3
Notification to followers Yes / No Within _____ working days		

#### GUA Stamp B

<b>GENERAL UNDERWRITERS AGREEMENT (GUA)</b> Each Underwriter's proportion is several not joint		
Slip Leader Only  Box 1	Slip Leader And Agreement Parties  Box 2	All Underwriters  Box3

## Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

- 4.2 The Slip Leader (and Agreement Parties if appropriate) shall then initial in the appropriate Box the level of authorisation required.
- 4.2.1 If any of the Slip Leader or Agreement Parties initials Box 3, the Alteration shall be referred to all Underwriters, each for its own individual signed proportion severally and not jointly.
- 4.2.2 If the Slip Leader initials Box 2, the Alteration shall be referred to all Agreement Parties.
- 4.2.3 If the Slip Leader initials Box 1 and initials and dates the endorsement in the customary place, no further agreement shall be required.
- 4.2.4 Agreement to Clause 4.2.1 or Clause 4.2.2 Alterations shall be effected by each Underwriter required initialling and dating the endorsement in the customary place.
- 4.3 Where the endorsement is not agreed on paper (e.g. where electronic messaging has been used), the parties shall adopt such alternative arrangements as are appropriate to give effect to the intent of Clauses 4.1 and 4.2 as if a GUA Stamp was incorporated into the endorsement and initialled.

### **5. Effective date of agreement**

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- 5.1 Unless otherwise specified on the endorsement, the agreement evidenced by the Alteration shall take effect:
- 5.1.1 for Clause 3.1 Alterations, on the date inserted by the Slip Leader, for the individual signed proportion of each Underwriter severally and not jointly;
- 5.1.2 for Clause 3.2 Alterations on the date when the last of the required agreements from the Slip Leader and Agreement Parties has been obtained, as inserted by that last Party, each for its own individual signed proportion severally and not jointly;
- 5.1.3 for Clause 3.4 Alterations, on the date inserted by each Underwriter, so far as its proportion is concerned.

### **6. Administration**

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- 6.1 Where an Alteration has been agreed by the Slip Leader (or by the Slip Leader and the Agreement Parties as applicable) and the Slip Leader or any Agreement Party requests that the agreed Alteration be notified or listed to other Underwriters, other Underwriters shall be notified within such period, following the effective date of the Alteration, as may be agreed by the Underwriter so requesting.
- 6.2 Where an Alteration is shown on the applicable Schedule Part 1 or 2 as requiring notification or listing, the Alteration once agreed by the Slip Leader (or by the Slip Leader and the Agreement Parties as applicable) shall be notified to other Underwriters within 5 working days following the date specified in Clause 5.1.1 or 5.1.2 (as applicable), or as specified in the applicable Schedule.
- 6.3 Where any event as provided for in Clause 7.1 occurs, notification of that event and of the name of the replacement Underwriter shall be given to all Underwriters within 5 working days of the broker concluding that the event could but for Clause 7.2 affect the making of an Alteration he proposes to seek.



## Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

### 7. Slip Leader/Agreement Party replacement

7.1 In the event that a Slip Leader or an Agreement Party (whether identified as such in the slip or acting as a result of prior operation of this clause):

- 7.1.1 becomes the subject of voluntary or involuntary rehabilitation or liquidation, action in bankruptcy or similar or in any way otherwise acknowledges its insolvency or is unable to pay its debts or losses; or
- 7.1.2 has its right to transact the main class of business covered by the slip withdrawn, suspended, removed or made conditional or impaired in any way by any regulatory authority; or
- 7.1.3 ceases to underwrite the main class of business covered by the slip or goes into run-off,

the authority of that Slip Leader or Agreement Party ("the affected Underwriter") shall automatically terminate from the date of that event.

7.2 The Underwriter identified in 7.2.1 – 7.2.3 below shall thereupon be forthwith authorised to act as the replacement Underwriter and exercise the powers and duties of the affected Underwriter:

- 7.2.1 if the affected Underwriter is the Slip Leader, the Agreement Party first appearing on the slip shall act as Slip Leader and the next Underwriter on the slip who has been neither the Slip Leader nor an Agreement Party shall act as the replacement Agreement Party;
- 7.2.2 if the affected Underwriter is an Agreement Party, the next Underwriter on the slip who has been neither the Slip Leader nor an Agreement Party shall act as the replacement Agreement Party;
- 7.2.3 if the affected Underwriter is the Slip Leader and sole Agreement Party, then the next Underwriter on the slip shall act as the Slip Leader and sole Agreement Party.

in the event that further Alterations are required, the broker shall give the notification specified in Clause 6.3 above. Without prejudice to Clause 8, the authority of those replacement parties shall be terminated to the extent that, and from the date that, the broker may receive notification from any other Underwriter that the replacement is not acceptable. After receipt of such notification, such an Underwriter shall, unless otherwise agreed, be consulted about the future Alterations which the replacement would otherwise be asked to consider, without prejudice to either the rights or obligations of that Underwriter or of the insured/reinsured named on the slip so far as Alterations agreed prior to that date are concerned.

### 8. Withdrawal or Termination of Delegated Authority

8.1 Any Other Underwriter or Agreement Party may, each for its own individual signed proportion severally and not jointly, withdraw the authority of one, more, or all of the Slip Leader and the Agreement Parties by notification to that effect to the broker identifying the risk/s concerned. That notification shall take effect on the date of its receipt by the broker but shall not prejudice either the rights or obligations of that Underwriter or of the insured/reinsured named on the slip so far as Alterations agreed prior to that date are concerned.

8.2 In the event that any individual Other Underwriter or Agreement Party:

## Appendix 2.1: The General Underwriters Agreement

General Underwriters Agreement, Version 2.0, February 2014

8.2.1 becomes the subject of voluntary or involuntary rehabilitation or liquidation, action in bankruptcy or similar or in any way otherwise acknowledges its insolvency or is unable to pay its debts or losses; or

8.2.2 has its right to transact the main class of business covered by the slip withdrawn, suspended, removed or made conditional or impaired in any way by any regulatory authority;

that Underwriter shall forthwith notify the broker of that event. The authority of the Slip Leader and of any Agreement Party shall, to the extent of that Underwriter's proportion, automatically terminate from the date of that event, whether or not the broker or the insured/reinsured is aware of that event. Notwithstanding that automatic termination, that authority may be subsequently reinstated, but only upon agreement between the insured/reinsured, that Underwriter, the Slip Leader and any Agreement Party.

### **9. Rights of Third Parties**

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9.1 Nothing in this GUA grants any additional rights or benefits to any third party other than the insured/reinsured. No term of this GUA shall be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any third party other than the insured/reinsured named on the slip.

### **10. Terms of the Slip**

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10.1 Save as provided for in the Condition Paramount and in Clause 11:

10.1.1 where the slip or any endorsement thereto conflict with the terms of this GUA, the terms of the slip/endorsement shall prevail, provided that for the purpose of this clause, the terms of the slip/endorsement are those shown to and subscribed by each subscribing Underwriter for its own proportion.

10.1.2 where the risk has been written as provided for in Clause 1.2, and its terms or those of any endorsement to it conflict with the terms of this GUA, the terms of the declaration, certificate or other form of contract of insurance or reinsurance or endorsement thereto shall prevail, provided that for the purpose of this clause, the terms thereof are those authorised by each subscribing Underwriter for its own proportion in the original lineslip, marine cargo cover or other contract for insurance or reinsurance.

### **11. Choice of Law**

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11.1 Notwithstanding any other choice of law, express or implied, in the contract of insurance or reinsurance, this GUA shall in all respects always be governed by and construed in accordance with English Law.

## Appendix 8.8: Employers' Liability/Workers' Compensation, IUA02-018 ACOD/B (Version 2013)

### IUA 02-018 ACOD/B (Version 2013)

#### Employers' Liability / Workers' Compensation

##### DEFINITION OF OCCUPATIONAL DISEASE COVER

1. Insofar as liability is incurred by the reinsured under insurance policies providing coverage for employers' liability and / or workers' compensation in respect of legal liability for occupational disease or physical impairment which does not arise from a sudden and identifiable occurrence this *[Response, e.g. Contract, Agreement]* shall only provide cover for such liability on the following basis:
  - 1.1. Where the occupational disease or physical impairment results from exposure to a hazard of the employment of the claimant, any one claim in respect of any one employee of an original insured arising out of this exposure shall be considered individually as one occurrence for the purpose of recovery hereunder.
  - 1.2. Where the legal liability of the original insured to the original claimant is established on an exposure basis, that is legal liability of the original insured attaches for the whole or part of the period for which the claimant employee was exposed to the hazard of the employment, then recovery hereunder shall be on the following basis:
    - 1.2.1. the proportion of the total claim amount in respect of any one employee that shall be attributable to this *[Response, e.g. Contract, Agreement]* shall be no greater than the proportion of such amount which the period of this *[Response, e.g. Contract, Agreement]* bears to the total period during which the employee was exposed to the hazard of the employment; and
    - 1.2.2. the retention of the reinsured and the limit of liability of the reinsurers under this *[Response, e.g. Contract, Agreement]* shall be reduced in the proportion that the period of this *[Response, e.g. Contract, Agreement]* bears to the total period during which the employer was insured by the reinsured and during which the employee was exposed to the hazard of the employment.

Provided always that the exposure shall have taken place during the period of this *[Response, e.g. Contract, Agreement]* and no amount shall be recovered hereunder otherwise.
- 1.3. In the event of legal liability against an original insured being established for occupational disease or physical impairment which does not arise from a sudden and identifiable occurrence on other than an exposure basis (as set out in 1.2. above) then, for the purpose of recovery hereunder, the date of the occurrence shall be the date from which such legal liability against the original insured is established.
2. Insofar as liability is incurred by the reinsured under Retrospective Insurance coverage for employers' liability and / or workers' compensation for occupational disease or physical impairment which does not arise from a sudden and identifiable occurrence, this *[Response, e.g. Contract, Agreement]* shall provide cover on the following basis:

## Appendix 8.8: Employers' Liability/Workers' Compensation, IUA02-018 ACOD/B (Version 2013)

- 2.1. any one claim in respect of any one employee of an original insured shall be considered individually as one occurrence for the purpose of recovery hereunder; and
- 2.2. the date of the occurrence shall be deemed to be the date the original insured is advised of such claim.
- 2.3. Clause 1 above shall not apply.
3. To the extent that any provision elsewhere in this *[Response, e.g. Contract, Agreement]* conflicts with any provision contained within this Definition of Occupational Disease Clause, the provisions in this clause shall take precedence over any other provision.

### Definitions

Retrospective Insurance means insurance policies (issued on a claims made basis) which cover an exposure period prior to the inception date of the insurance policy covered under this *[Response, e.g. Contract, Agreement]*.

**IUA 02-018 ACOD/B (Version 2013)**

**25 July 2013**