**ASG 9A**

***(ENGLISH HIGH COURT VERSION)***

**Admiralty Solicitors Group**

**ASG CARGO UNDERTAKING**

***(ENGLISH HIGH COURT VERSION)***

TO: The owners of and/or the underwriters and/or those entitled to sue in respect of the cargo lately laden on board the vessel [**insert name**], as identified in Schedule 1 attached hereto (hereinafter together referred to as the "Cargo Owners"). ***[see Note 1]***

c/o:

Dear Sirs,

Ship :

Voyage :

Cargo :

Bills of

Lading/Container nos/

Charterparty :

Claim :

IN CONSIDERATION of your consenting to release from arrest and/or refraining, subject to (4) below, from taking action resulting in the arrest or re-arrest at any time hereafter of the above-mentioned ship and any other ship or assets in the same ownership, associated ownership or management for the purpose of obtaining security in respect of the above mentioned claim of the Cargo Owners, and of the Cargo Owners refraining, subject to (4) below, from commencing and/or prosecuting legal or arbitration proceedings in respect of the above mentioned claim otherwise than before the court referred to below against the above-named ship and/or [**name of shipowner**] of [**insert address**] (hereinafter "the Shipowners"), who we are informed owned the above-named ship at all material times ***[see Note 2]***, we hereby undertake to pay to you (or your nominated solicitors at the time of any demand hereunder) on behalf of the Cargo Owners on demand ***[see Note 3]*** such sums to be adjudged or declared by final unappealable judgment of the English High Court of Justice (or on appeal therefrom)to be or have been payable by, or as may be agreed to be or have been recoverable from, the above-named ship and/or the Shipowners in respect of the said claim, interest and costs of the Cargo Owners provided that the total liability hereunder shall not exceed the sum of [**insert sum**] [plus/inclusive of\*] interest and costs. ***[see Note 4]***

And for the consideration aforesaid:

1. We hereby warrant we have been informed that the above-named ship was not demise chartered at any material time. ***[see Note 2]***
2. We further undertake that we will within 14 days of the receipt from you of a request so to do, instruct and authorise solicitors forthwith
3. to accept on behalf of the above-named ship and/or the Shipowners service at your option of a Claim Form in rem and/or in personam issued by the Cargo Owners in the English High Court of Justice; and
4. to notify you in writing that they have been so instructed to accept service at an address in England.
5. We confirm that the Shipowners agree that the above-mentioned claim shall be subject to English law and to the exclusive jurisdiction of the English High Court of Justice.
6. Nothing in this undertaking shall prevent the Cargo Owners and/or the Shipowners from exercising their right (if any and if appropriate) to obtain an adjustment to the amount secured hereunder at any time after the date hereof. ***[see Note 5]***
7. We warrant that we have received irrevocable authority from the Shipowners to instruct solicitors as aforesaid and to give this Letter of Undertaking in these terms.

This undertaking is not to be construed as an admission of liability on the  part of the above-named ship and/or Shipowners and is issued entirely without prejudice to any rights, defences, immunities or limitations, which the above-named ship and the Shipowners may have.

For the same consideration as aforesaid, this undertaking shall also be governed by and construed in accordance with English law and any dispute hereunder and/or for the purposes of enforcement hereof shall be referred to the exclusive jurisdiction of the English High Court of Justice. ***[see Note 6]*** We confirm that our registered or principal office is situated at [**insert details**].

……………………………………………………..

(Authorised signatory)

*\*delete "plus" or "inclusive of".*

01/11/17

**NOTES TO ASG 9A**

**NB: This is the English High Court and English law version. There are other versions where London Arbitration and English law are agreed (ASG 9B) or where Competent Court or Tribunal is agreed (ASG 9C).**

1. The owners and/or underwriters and/or anyone entitled to sue can be identified either in the undertaking, if only one party, or otherwise in a schedule to be attached. The identity or identities of the party/parties to whom the undertaking is to be given needs to be set out to enable the guarantor to ensure that none of them is subject to any legal sanctions.

If after the provision of the undertaking further parties are shown to be entitled to sue in respect of the cargo and claim such parties may, subject to the P&I Club's agreement, be added to the addresses at a later date. Otherwise any new additional party may have a right of arrest and seek additional security.

1. If the vessel's P&I Club is providing the undertaking they will not be in a position to warrant for themselves that the vessel was not demised chartered, or that the vessel is owned by the named Shipowners, only that they have been informed by the Shipowners that this is the case. A separate letter from the Shipowners can be obtained to provide the required warranty – see **ASG 9D**.
2. The P&I Club providing the undertaking might wish to ensure that they are notified about any proceedings issued against the Shipowners prior to any judgment and subsequent attempts to enforce the undertaking in case any judgement is obtained by default without the P&I Club's knowledge. Whilst not a term of this wording, the P&I Club might require a notice provision or side letter of comfort as a requirement before any demand for payment under the undertaking is made, as would be normal practice.
3. The default position would normally be that the amount to be guaranteed is plus interest and costs. It is recognised that some P&I Clubs wish to have an all-inclusive amount, but this is a matter of negotiation and agreement, if possible, between the parties. An either/or is therefore provided with "plus" or "inclusive of" to be deleted depending on what is agreed in terms of quantum of the security amount. There is no formula for adding interest and costs as, in particular, the costs are not based on the quantum of the claim. Therefore an all-inclusive quantum figure will by necessity have to be enough to cover a reasonable period for interest and the potential costs of litigation notwithstanding the principle claim amount.
4. Any right to arrest or re-arrest after the provision of the undertaking for an adjustment of the undertaking amount may only be possible (if at all) in the particular jurisdiction of such any arrest or re-arrest, and only if appropriate and/or reasonable. It is a matter for the parties to act reasonably in trying to establish the quantum of the claim at the time the undertaking is being provided, but where the quantum of the claim is still not certain the claimants might be entitled (if possible) to seek and obtain an increased guarantee amount and/or for the Shipowners to seek a reduced guarantee amount, failing agreement. This sub-clause may not be accepted by all P&I Clubs who may prefer certainty on the claim amount. In that case, the amount of the security will have to be more than adequate to ensure it covers contingencies in case the claim amount changes after security is provided.
5. The intention is that any issues as between the claimant and the guarantor under this guarantee, in terms of the wording or enforcement, shall only be referred to the English Courts and to no other jurisdiction, and that by accepting the undertaking the claimant is agreeing to be bound by this. This paragraph could be amended to reflect the jurisdiction of the domicile of the guarantor if agreed to be more appropriate.

01/11/17