

BB Standard Form Letter of Indemnity to be given in return for Delivering Cargo at a Port other than that Stated in the Bill of Lading Incorporating a Bank's Agreement to join in the Letter of Indemnity

Important

Delivery of cargo at a port other than stated in the bill of lading will take an owner/carrier or other recipient of a Letter of Indemnity outside the scope of their P&I cover. Acceptance of a Letter of Indemnity in the form set out below does not reinstate P&I cover and you may be at risk of significant financial exposure. You should therefore satisfy yourself of the financial standing of the party providing the Letter of Indemnity.

To: [insert name of Owners and/or Managers as appropriate]

[insert date]

The Owners and/or Managers of the [insert name of Vessel]

[insert address]

Dear Sirs

Vessel: [insert name of vessel]

Port of Loading: [as stated in bill of lading]

Port of Discharge: [as stated in bill of lading]

Cargo: [insert description of cargo incl. weight, volume, measurement, quantity figures and remarks as set out in bill of lading]

Bill(s) of Lading: [insert identification numbers, date and place of issue.]

The above Cargo was shipped on the above Vessel by [insert name of shipper] and consigned to [insert name of consignee or party to whose order the bills of lading are made out, as appropriate] for delivery at the Port of Discharge but we, [insert name of party requesting substituted delivery], hereby request you to order the Vessel to proceed to and deliver the said cargo at [insert name of substitute port or place of delivery] against production of at least one original Bill(s) of Lading.

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants and agents and to hold all of you harmless in respect of any liability, loss, damage or expense of whatsoever nature which you may sustain by reason of delivering the Cargo in accordance with our request.
2. In the event of any proceedings being commenced against you or any of your servants or agents in connection with the delivery of the Cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If, in connection with the delivery of the Cargo as aforesaid, the Vessel, or any other vessel or property in the same or associated ownership, management or control, or any vessel or property in your ownership, management or control, should be arrested or detained or should the arrest or detention thereof be threatened, or should there be any interference in the use or trading of the Vessel or such other vessels or property (whether by virtue of a caveat being entered on the Vessel's or such other vessel's registry or otherwise howsoever):
 - (a) to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of the Vessel or such other vessel or property or to remove such interference;
 - (b) if you have already provided security, to provide on demand equivalent substitute or counter security, whether or not you have made any prior demand upon us and whether or not such security exceeds the value of the Vessel or such other vessel, and

(c) to indemnify you in respect of any liability, loss, damage or expense caused by such arrest or detention or threatened arrest or detention or such interference, whether or not such arrest or detention or threatened arrest or detention or such interference may be justified.

4. . If the place at which we have asked you to make delivery is a bulk liquid, dry bulk cargo or gas terminal or other facility, or another vessel, lighter or barge, then discharge or delivery to such terminal, facility, vessel, lighter or barge shall be deemed to be delivery to the party to whom we have requested you to make such delivery.
5. The liability of each and every person under this indemnity shall be joint and several and shall not be conditional upon your proceeding first against any person, whether or not such person is party to or liable under this indemnity.
6. This indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity submits to the exclusive jurisdiction of the High Court of Justice of England.*1

Note:

1. The proforma wording provides for English law and jurisdiction and the wording is drafted on the basis of English law. Choosing English law and the English courts gives a number of benefits. Choosing a different legal or court system may mean that these benefits are lost or that enforcement of the obligations within the letter is more difficult or inconsistent with the enforcement of any other letters of indemnity given in the same charterparty chain.

Yours faithfully for and on behalf of [insert name of Requestor]

The Requestor

Full name

Signature

Authorised signatory*2

Note:

2. Care should be taken to (a) clearly identify who is signing the letter and (b) have them take reasonable steps to demonstrate that they have authority to sign the letter (such as the use of an official stamp, identification of their role/title, etc).

We, [insert name of the Bank], hereby agree to join in this Indemnity providing always that the Bank's liability:

1. shall be restricted to payment of specified sums of money demanded in relation to the Indemnity (and shall not extend to the provision of bail or other security)
2. shall be to make payment to you forthwith on your written demand in the form of a signed letter certifying that the amount demanded is a sum due to be paid to you under the terms of the Indemnity and has not been paid to you by the Requestor or is a sum which represents monetary compensation due to you in respect of the failure by the Requestor to fulfil its obligations to you under the Indemnity. For the avoidance of doubt the Bank hereby confirms that:

(a) such compensation shall include, but not be limited to, payment of any amount up to the amount stated in proviso 3 below in order to enable you:

(i) to arrange the provision of such bail or other security as may be required to prevent the arrest or detention of the Vessel, or any other vessel or property in the same or associated ownership, management or control, or any vessel or property in your ownership, management or control or any interference in the use or trading of the Vessel or such other vessels or property (whether by virtue of a caveat being entered on the Vessel's or such other vessel's registry or otherwise howsoever), or

(ii) to secure the release of the Vessel or such other vessel or property or to remove such interference;

(b) if you have already provided security, to provide on demand equivalent substitute or counter security of any amount up to the amount stated in proviso 3 below, whether or not you have made any prior demand upon us or the Requestor and whether or not such security exceeds the value of the Vessel or such other vessel.

3. shall be limited to a sum or sums not exceeding in aggregate [insert currency and amount in figures and words]
4. subject to proviso 5 below, shall terminate on [date six years from the date of the Indemnity] (the 'Termination Date'), except in respect of any demands for payment received by the Bank hereunder at the address indicated below on or before that date
5. shall be extended at your request from time to time for a period of two calendar years at a time provided that:
 - (a) the Bank shall receive a written notice signed by you and stating that the Indemnity is required by you to remain in force for a further period of two years, and
 - (b) such notice is received by the Bank at the address indicated below on or before the then current Termination Date.

Any such extension shall be for a period of two years from the then current Termination Date and, should the Bank for any reason be unwilling to extend the Termination Date, the Bank shall discharge its liability by the payment to you of the maximum sum payable hereunder (or such lesser sum as you may require).

However, in the event of the Bank receiving a written notice signed by you, on or before the then current Termination Date, stating that legal proceedings have been commenced against you as a result of your having delivered the said Cargo as specified in the Indemnity, the Bank agrees that its liability hereunder will not terminate until receipt by the Bank of your signed written notice stating that all legal proceedings have been concluded and that any sum or sums payable to you by the Requestor and/or the Bank in connection therewith have been paid and received in full and final settlement of all liabilities arising under the Indemnity.

6. shall be governed by and construed in accordance with the law governing the Indemnity and

the Bank agrees to submit to the jurisdiction of the court stated within the Indemnity.

It should be understood that, where appropriate, the Bank will only produce and deliver to you all original bills of lading should the same come into the Bank's possession, but the Bank agrees that, in that event, it shall do so.

The Bank agrees to promptly notify you in the event of any change in the full details of the office to which any demand or notice is to be addressed and which is stated below and it is agreed that you shall also promptly notify the Bank in the event of any change in your address as stated above.

Please quote the Bank's Indemnity Ref..... in all correspondence with the Bank and any demands for payment and notices hereunder.

Yours faithfully

For and on behalf of [insert name of bank]

[insert full details of the office to which any demand or notice is to be addressed]

Signature