



**Excess of Loss Policy Wording
USXL201704**

The *Proposal Form* and Declarations attached to this policy form part of the policy. In consideration of the premium paid and in reliance upon the *Proposal Form* and statements made to the *Company* by the *Insured* and subject to the Declarations and endorsements made a part of this *Policy* and the terms, conditions and limitations set forth herein, the *Company* hereby agrees as follows:

1. Insuring Agreement

The *Company* will pay to the *Insured* the *Insured Percentage* of any *Loss* in excess of the applicable *Annual Aggregate Deductible*. When calculating a claim, the amount of *Loss* included shall not exceed the *Credit Limit* for the *Buyer*.

2. Definitions

(a) Additional Named Insured

An entity/entities that *the Insured* controls, which *the Insured* has requested be added to the *Policy* during the *Policy Period* and identified in the Declarations. All *Additional Named Insureds* together with the *Insured* must adhere to all the terms of the *Policy* and shall be treated under this *Policy* as a single party. Breaches of representations and agreements and/or other terms of the *Policy* shall be considered breaches by all. Any limits in this *Policy* apply to the *Insured* and all *Additional Named Insureds* in the aggregate and not to each individually. Any claims settlement, compromise agreement or arbitration award under this *Policy* shall bind the *Insured* and all *Additional Named Insureds*.

(b) Annual Aggregate Deductible

The amount of *Loss* in respect of *Shipments* made during the *Policy Period* that the *Insured* shall bear for its own account before the *Company* shall make payment under this *Policy*. Any *Recoveries* in respect of any *Loss* borne by the *Insured* under the *Annual Aggregate Deductible* shall reinstate the latter by the same amount of such *Recoveries*.

(c) Buyer

Any entity identified in Appendix B to the Declarations as the buyer and all companies and other entities controlling, controlled by, or under common control with that entity, where control means ownership directly or indirectly of more than fifty percent of the voting share capital.

(d) Claim

A written request by the *Insured* or anyone acting on behalf of the *Insured* for reimbursement of a *Loss* under this *Policy*.

(e) Company

Equinox Global Inc writing for and on behalf of certain underwriters at Lloyd's named in the Declarations, against "For the Company".

(f) Credit Limit

In relation to any given *Buyer*, the amount described as *Credit Limit* and specified in Appendix B of the Declarations or by later endorsement.

(g) Credit Procedures

The representations made by the *Insured* to the *Company* that describe its credit management procedures. This includes the Credit Procedures Questionnaire and the *Insured's* credit manual on file with the *Company*.

(h) Due Date

A date on which payment was due to the *Insured* as specified in the *Insured Contract*.

(i) Insolvency

Any of the following steps, or an equivalent step, has been taken by or against the relevant entity pursuant to the law of the country having jurisdiction over the entity's affairs:

1. A judicial order has been made for the winding-up or dissolution of the entity;
2. A petition for relief under the bankruptcy laws has been filed by or against the entity;
3. Bankruptcy or insolvency is adjudicated;
4. A court having jurisdiction approves a compromise, composition or similar arrangement of debts on the basis of a receiving order; or the entity makes a valid assignment, composition or similar arrangement for the benefit of all creditors;
5. The appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in each case, whether out of court or otherwise) in respect of the entity or any of its assets;
6. A court having jurisdiction orders the winding up or the liquidation of the entity; or an effective resolution is passed for the voluntary winding-up or liquidation of the entity;
7. Circumstances exist which in the *Company's* opinion are equivalent to one of the above.

(j) Insured

The *Insured* and/or *Additional Named Insureds* specified in the Declarations.

(k) Insured Contract

The contract between *the Insured* and a *Buyer* pursuant to which *Shipments* are made.

(l) Insured Percentage

The percentage stated in the Declarations, or Appendix B, by which a *Loss*, or where there is more than one *Loss*, the aggregate of *Losses*, in excess of the *Annual Aggregate Deductible* is multiplied to determine the *Company's* payment to *the Insured* under this *Policy*.

(m) Loss

The non-receipt of a legally enforceable (when created) and undisputed payment owed to the *Insured* from a *Buyer* for *Shipments* made pursuant to *Insured Contracts* during the *Policy Period*, less any amount which the *Insured* or the *Buyer* are entitled to credit to the *Buyer's* account by way of set off, counterclaim or otherwise,

less any sales or value added tax the *Insured* saves as a result of the non-payment, and less any interest accruing after the *Due Date*.

Any amount owing to the *Insured* below the amount of the *Non-Qualifying Loss* shall not qualify as a *Loss* (or be applied to the *Annual Aggregate Deductible*) for the purposes of this *Policy*. However, if a given amount owing would have exceeded the amount of the *Non-Qualifying Loss* except that the *Shipments* took place in two consecutive *Policy Periods*, then it will be deemed that all the *Shipments* took place within the *Policy Period* in which the majority of *Shipments* by monetary value were made.

(n) Policy

This document, which is the contract of insurance between the *Insured*, the *Additional Named Insureds* and the *Company*, including the Declarations, any endorsements, *Proposal Form* and/or schedules.

(o) Proposal Form

The Credit Insurance Proposal Form the *Insured* completed and submitted to the *Company* in connection with the *Company* agreeing to issue this *Policy*.

(p) Policy Period

The period this policy is in force, as specified in the Declarations. This policy shall apply to all *Shipments* made to the *Insured's Buyers* within the *Policy Period*.

(q) Recoveries

All sums whatsoever received, recovered or realized after the date the *Company* pays a *Claim* under this *Policy*, whether by the *Insured*, by any person acting on the *Insured's* behalf or by the *Company* in relation to the *Loss*.

(r) Shipment

The sale of goods or services in accordance with the terms of an *Insured Contract*. With respect to goods, *Shipment* shall be deemed to be made when goods are placed irretrievably en route to the *Buyer*. In the case of services, *Shipment* shall be deemed to be made when each invoice for services performed is submitted to the *Buyer*.

(s) Waiting Period

The number of days that must elapse after the *Due Date* before a *Loss* under this *Policy* is deemed to have occurred. In the case of the *Buyer's Insolvency*, the end of the *Waiting Period* shall be immediately upon the *Due Date* or the date of *Insolvency*, whichever is later. In all other cases, the *Waiting Period* shall be 180 days from the *Due Date* unless specified otherwise in Appendix A (Country Limits) to the Declarations or by a later endorsement.

(t) Items in italics

Items in italics which are not defined above are defined in the Declarations.

3. Credit Limits

The *Insured* must have in place a *Credit Limit* for every *Buyer*.

(a) Discretionary Credit Limits

The *Insured* may set its own written *Credit Limit* up to the amount specified as the *Discretionary Credit Limit* in the Declarations. *Discretionary Credit Limits* must be set in accordance with the *Insured's Credit Procedures* and appended to the *Policy* by way of an Endorsement.

(b) Credit Limits Endorsed by the Company

Any *Credit Limit* that exceeds the *Discretionary Credit Limit* will not be deemed in place under this *Policy* unless endorsed in writing by the *Company*. Any *Credit Limit* endorsed by the *Company* will override any *Discretionary Credit Limit* set by the *Insured* on the same *Buyer*. *Credit Limits* endorsed by the *Company* may vary any provision of this *Policy*.

4. Limits of Liability

(a) The Credit Limit

When calculating a claim, the amount of *Loss* included shall not exceed the *Credit Limit* for the *Buyer*.

(b) The Country Limit

The maximum amount the *Company* will pay in relation to all *Losses* with *Buyers* in a given country shall be the *Country Limit* specified in Appendix A or, in the case of Third Countries, as specified in Appendix C to the Declarations or by a later endorsement.

(c) Policy Limit

The maximum amount the *Company* will pay in relation to all *Losses* for the *Policy Period* shall be the *Policy Limit* specified in the Declarations or by a later endorsement.

5. Exclusions

(a) Failure by the Insured

Any Loss caused by any failure by the *Insured* or by any of its agents to fulfil any of the terms or conditions of the *Insured Contract* or to comply with the provisions of any regulation or law, or caused by *Insolvency* of the *Insured*.

(b) Import and Export Licenses

Any Loss caused by a failure to obtain any export or import license or other authorization necessary for the performance of the *Insured Contract*, unless the necessity arose after the date of *Shipment*.

(c) Third Countries

Any Loss arising directly as a result of an event occurring in a country other than the *Buyer's* country, unless the third country is specified in Appendix C to the Declarations.

(d) Disputes

As provided for in paragraph 6(k), any Loss in relation to any amount which is the subject of an unresolved dispute between the *Insured* and the *Buyer*.

(e) Stop Shipment

Any Loss in relation to any transaction where, on the date of *Shipment*:

- (i) any amount is overdue from the *Buyer* beyond the expiry of the *Stop Shipment Period* specified in the Declarations (other than an amount which is subject to a dispute which the *Insured* has acknowledged); or
- (ii) the *Insured* was aware of any circumstance which might reasonably be expected to result in a Loss.

(f) Radioactive Contamination

Any Loss directly or indirectly caused by, contributed to, by or arising from the ionising, radioactive, toxic, explosive or other hazardous or contaminating properties or effects of any explosive nuclear assembly or component thereto, nuclear fuel, combustion or waste.

(g) War between the Five Great Powers

Any Loss arising directly or indirectly from war (whether before or after the outbreak of hostilities) between any of the following: China, France, the United Kingdom, the Russian Federation and the United States of America.

(h) Non-conforming Transactions

Any *Shipments* or transactions which fall outside the parameters described in the Declarations.

(i) Sales to affiliates

Any sales or *Shipments* to the *Insured's* affiliated or subsidiary companies, unless the *Insured* has disclosed the relationship to the *Company* before any such sale or *Shipment* and the *Company* has specifically agreed a *Credit Limit* on the *Buyer* acknowledging the relationship.

6. Obligations of the Insured

(a) Disclosure

The *Insured* must have disclosed and continue at all times to disclose all facts which might affect the risk insured under this *Policy*. This applies, without limitation, to the *Proposal Form* (which is incorporated into and constitutes a part of this *Policy*) and to the statements made when applying for *Credit Limits* and *Country Limits* on an ongoing basis.

The *Insured* agrees and represents that the information in the application for this *Policy*, including all facts in the *Proposal Form* and its attachments, as well as any other statements made by the *Insured* or anyone acting on the *Insured's* behalf, is accurate, true and complete. The *Company* relied on such information in issuing this *Policy*.

The *Insured* further agrees and represents that it has no knowledge as of the inception date of this *Policy*, of any fact or circumstance which would reasonably be expected to result in a *Loss* under this *Policy*.

(b) Legally Enforceable Indebtedness

For all *Shipments*, the *Insured* must establish an indebtedness that is legally enforceable (when created) in the *Buyer's* country and use its best endeavours to maintain enforceability.

(c) Due Care and Diligence

The *Insured* must use due care and diligence and take all reasonable and customary measures to prevent or minimize *Loss* at all times. This includes ensuring all rights against the goods, *Buyer* and third parties are properly preserved and exercised, including the institution of legal proceedings against the *Buyer* or any guarantor. The *Insured* must also take any other measures which may be required by the *Company*.

(d) Controlling Credit Extensions

The *Insured* may grant, for each *Shipment*, one extension of the *Due Date* up to the end of the *Maximum Extension Period*, provided that the payment instrument is not a bill of exchange, promissory note, letter of credit or documentary sight draft. Otherwise the *Insured* may not accelerate, reschedule or change the *Due Date* without the *Company's* written consent. Where the *Insured* grants one extension as above, the extended *Due Date* shall be considered to be the *Due Date* for the purposes of this *Policy*.

(e) Uninsured Amounts

The *Insured* must retain for its own account, the portion of all *Losses* that are not payable under this *Policy*.

(f) Report of Overdues

The *Insured* must provide a report within 20 days of the end of each calendar month showing, as at the month end, any undisputed amounts of more than the *Overdue Reporting Minimum* that are overdue from a *Buyer* by more than the *Stop Shipment Period*.

(g) Providing Information

The *Insured* must provide the *Company* with all information and documents relating to the risks insured and/or any *Loss* or *Claim* under this *Policy* that the *Company* may request.

(h) Adverse Information

The *Insured* must immediately notify the *Company* on becoming aware of any circumstance which might reasonably be expected to result in a *Loss*.

(i) Stop Shipment and Chronological Allocation of Payments

The *Insured* must not make further *Shipments* after becoming aware of a circumstance which might reasonably be expected to result in a *Loss*, without the *Company's* written permission.

The *Company* will not be liable for any loss arising from *Shipments* the *Insured* makes while a *Buyer* has amounts that have been outstanding for longer than the *Stop Shipment Period*. This will not apply where the outstanding amount is due to a dispute that the *Insured* has acknowledged.

If the *Insured* continues *Shipments* beyond the *Stop Shipment Period* on an uninsured basis, even where the terms of payment are cash in advance, this could reduce the calculation of any *Loss*. For the purposes of calculating a *Loss*, all amounts received from a given *Buyer* (whether or not in respect of *Shipments* insured by the *Company*, and irrespective of any designation by the *Buyer*) shall be allocated and applied to the payment obligations of the *Buyer* in the chronological order of *Due Dates*.

(j) Compliance with Credit Procedures

The *Insured* must comply with its *Credit Procedures* at all times, including without limitation:

- (i) Verifying at the time of each new *Shipment* that the *Buyer* has the ongoing financial capacity to meet its payment obligations;
- (ii) Reassessing a *Buyer* that has previously been subject to an interruption of *Shipments* in accordance with clause 6(i), and which is now up to date with its payment obligation, before agreeing to any new *Shipment*;
- (iii) Establishing a *Discretionary Credit Limit*.

The *Insured* shall not make any material variation or amendment to its *Credit Procedures* without the prior written approval of the *Company*.

(k) Disputes

The *Company* shall not be liable for any amount which is the subject of dispute between the *Insured* and the *Buyer* unless the *Insured* and the *Buyer* settle the dispute or the *Insured* establishes that such amount is valid and legally enforceable in the courts of the *Buyer's* country.

(l) Report of Sales

The *Insured* must provide an accurate report of its annual sales in respect of the business to which this *Policy* applies within 30 days from expiry of the *Policy Period*.

(m) Invoicing period

The *Insured* must promptly submit its invoices to *Buyers* within the number of days indicated in the *Declarations*. For goods, this must be from the date of *Shipment* and, for services, from the date of completion of services for which the *Insured* is entitled to receive payment from the *Buyer*.

7. Claims

The *Insured* has the responsibility for proving a *Loss* under this Policy and evidencing that all conditions, conditions precedent and obligations have been complied with at all times.

(a) Making a Claim

The *Insured* must submit a *Claim*, including with it all available supporting information, within 240 days of the *Due Date*, otherwise the *Company* shall have no liability whatsoever for the *Shipment* to which the *Claim* relates.

(b) Written Demand

At least 30 days before submitting the *Claim* to the *Company*, the *Insured* must have made a formal written demand for payment of the amount owing from the *Buyer* and from each guarantor (if any).

(c) When will the Company Make Payment?

Subject to the terms and conditions of this *Policy*, the *Company* will pay the *Claim* no more than 30 days from the date of the *Company's* receipt of all information that the *Company* agrees proves the *Loss*, or from the end of the *Waiting Period*, whichever is the later.

(d) Subrogation

Upon payment of a *Claim*, the *Company* shall be subrogated to all the *Insured's* rights of recovery against any person or organization. The *Insured* must continue to take all steps which may be necessary, or which the *Company* may request, to effect recoveries. Upon request the *Insured* must assign and transfer to the *Company* its rights in connection with the *Loss*.

(e) Expenses

Where the *Company* has given prior agreement in writing for the *Insured* to incur an extraordinary expense in order to fulfil its obligations to minimize and recover a *Loss*, the *Company* will contribute towards that expense. The *Company's* contribution will be proportionate to its liability for the *Loss*.

(f) Recoveries

All *Recoveries* must immediately be remitted to the *Company* in full and without deduction. Until this remittance is made the *Insured* receives and holds *Recoveries* in trust for the *Company*. The *Company* shall be allocated the *Insured Percentage of Recoveries* up to an amount equal to the sum of (i) the amount it has paid for the *Loss* (ii) its contribution towards the *Insured's* expenses (iii) the *Insured Percentage* of any interest recovered and (iv) the additional amount the *Company* would have paid but for the *Annual Aggregate Deductible*. From the sum so allocated, the *Company* will retain funds up to the total of items (i) to (iii) and any remaining balance will reinstate the *Annual Aggregate Deductible*. All further sums will be allocated to the *Insured*.

8. General Conditions

(a) Assignment of Policy Rights

The *Insured* cannot assign this *Policy* or any of its benefits without the *Company's* written consent.

(b) Assignment of Contract Rights

If the right to receive payment from the *Buyer* has been assigned or charged to a third party, or is in any way encumbered, the *Company* will not be liable to make payment until the person in whose favor the assignment or charge has been made, has given the *Company* a written undertaking that they will account to the *Company* for, and will not make any claim to, the *Company's* allocation or proportion of the *Recoveries*.

(c) Waivers

No variation or waiver relating to any term or condition of this *Policy* shall be binding unless the *Company* has specifically agreed to it in writing.

(d) Conversion of Currencies

Where the amount owing from a *Buyer* is denominated in any currency other than the *Policy Currency*, payment of any *Loss* will be made in the *Policy Currency* converted at the exchange rate (being the closing rate quoted in the Wall Street Journal) on the date of *Shipment*.

(e) Misrepresentation and Fraud

Any misrepresentation, omission or non-disclosure, whether fraudulent or otherwise, or fraudulent conduct on the *Insured's* part in relation to this *Policy* or a *Claim* under it or to any transaction to which this *Policy* applies, will render this *Policy* void but the *Company* shall retain any premium paid.

(f) Joint and Several Obligations

The obligations of the persons or organizations named as the *Insured* shall be joint and several and for avoidance of doubt the *Annual Aggregate Deductible* and all limits of any kind under this *Policy* shall apply to these persons collectively. A person or organization who is not a party to this *Policy* shall not have any rights under or in connection with this *Policy*.

(g) Conditions Precedent

The performance of the following paragraphs of this *Policy* shall be considered to be conditions precedent to the *Company's* liability to make payment under this *Policy*: Paragraphs 6(a) - 6(k) inclusive and 7(b). Due payment of premium including any premium taxes within 60 days of due date is also a condition precedent to the *Company's* liability under this *Policy*.

(h) Cancellation

The *Insured* is not permitted to cancel this *Policy*. There shall be no cancellation or return premium for short interest, unless specifically agreed by the *Company* at inception. The *Company* is permitted to cancel this policy for non-payment of premium or in the event of the *Insured's Insolvency*. In the event of cancellation by the *Company*, the *Company* shall notify the *Insured* in writing stating when (not less than 10 days thereafter) the cancellation shall be effective. Upon the effective date of cancellation, this *Policy* shall be void and no *Loss* occurring thereafter shall be eligible for payment. The mailing of such cancellation shall be sufficient proof of notice.

(i) Set off

The *Company* is entitled to set off any amount payable under this *Policy* against any amount that is owing from the *Insured* to the *Company*, whether under this *Policy* or otherwise.

(j) Arbitration

Any dispute relating to this *Policy* shall be submitted to arbitration. Each party shall appoint its arbitrator within 30 days after written request for arbitration has been received from the party requesting arbitration. If either of the parties fails to appoint an arbitrator within this 30 day period, then the other party will appoint an arbitrator on behalf of the failing party.

The two party appointed arbitrators shall select within 10 days after having both been appointed, a third arbitrator to serve as umpire in the arbitration. Should the two party appointed arbitrators fail to agree on an umpire, then the parties shall utilize the American Arbitration Association's ("AAA") "Arbitration Select: List and Appointment" process or equivalent process to appoint the umpire by requesting a list of 10 arbitrators, experienced in commercial insurance matters.

All three members of the arbitration panel shall be disinterested and neutral. The arbitration panel shall adopt their own rules and procedures. The decision of the majority of the arbitration panel shall be final and binding on the parties. The arbitration panel is not empowered and has no authority to award punitive, exemplary, special or consequential damages, including, non-exclusively, loss of revenue, income, or profits.

The arbitration shall take place in New York, New York unless some other location is mutually agreed upon by the parties. The parties shall share equally in the costs of the arbitration, including, non-exclusively, any AAA fees and the fees of the umpire.

(k) Governing Law

This *Policy* shall be governed and construed in accordance with the laws of the State of New York; provided that the terms and conditions of this *Policy* are construed in an even-handed fashion as between the *Insured* and the *Company*. Where the language of this *Policy* is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions (without regard to authorship of the language and without any presumption or arbitrary interpretation or construction in favor of either the *Insured* or the *Company* or reference to the "reasonable expectations" of either thereof or to contra proferentem).

(l) Complaints

If the *Insured* should have any complaint about a general insurance related matter or about the *Company's* service generally, the *Insured* should make its complaint in writing to the Complaints Officer, at the following address:

Equinox Global Inc
25 Broadway, 9th Floor
New York, NY 10004
E-mail: complaints@equinoxglobal.com
Telephone: +1 646 593 8682

After this action, if the *Insured* is still not satisfied with the way a complaint has been dealt with, the *Insured* is entitled to ask the Policyholder & Market Assistance Department c/o Lloyd's America Inc to review its case. The contact details are:

Policyholder & Market Assistance Department
c/o Lloyd's America Inc
181 West Madison Street
Suite 3870 Chicago
Illinois 60602-4541

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E-mail: complaints@lloyds.com

Telephone: +866 264 2533

Fax: +1 800 481 3121

(m) Sanctions

The *Company* shall not be deemed to provide cover and the *Company* shall not be liable to pay any *Claim* or provide any benefit hereunder to the extent that the provision of such cover, payment of such *Claim* or provision of such benefit would expose the *Company* and/or the London Underwriters which it represents, their parent companies or their ultimate controlling entities to any sanction, prohibition, reporting obligation or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

(n) Several Liability Notice

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

(o) Non-Cumulative Credit Limits

All *Credit Limits* and *Country Limits* under this policy and any preceding, replacement or future policies are non-cumulative. There shall never be more than one *Credit Limit* in effect for any one *Buyer* nor more than one *Country Limit* in effect for any one country.