

DUTCH BOURSE HULL POLICY FOR INLAND SHIPPING (2011)

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This contract meets the contingency requirement as referred to in Section 7:925 of the Netherlands Civil Code, if and insofar as the loss or damage incurred by the insured or any third party in respect whereof a claim for indemnity is made against the insurer(s) or any insured party is the result of an occurrence regarding which it was uncertain to the parties at the time the insurance contract was concluded that loss or damage on the part of the insured or such third party had arisen or would arise therefrom under normal circumstances.

ARTICLE 1 DEFINITIONS

Within the context of these conditions the following terms are understood to mean:

1.1 POLICYHOLDER

The natural person or legal entity with whom the insurance contract has been concluded and who is mentioned as such on the schedule;

1.2 INSURED

The natural person or legal entity who may derive rights from this insurance contract by virtue of the policy;

1.3 INSURERS

The parties who jointly bear the insured risk, each for no more than their respective share underwritten by or on behalf of them;

1.4 INSURED OBJECT

Hull and machinery complete with equipment, tools and any other accessories;

1.5 OCCURRENCE

An event or series of events arising from one single cause;

1.6 BODILY INJURY

Injury or impairment of health, whether or not resulting in death, including any consequential loss that can be valued in terms of money, and emotional damage;

1.7 EXPLOSION

A sudden violent manifestation of energy from gases or vapours, regardless how it arose. 'Implosion' is made subject to the same conditions as explosion.

1.8 TOTAL LOSS

The situation that:

- a. an insured object has been destroyed;

- b. an insured object has been damaged to such extent that it has ceased to be an interest of the insured type;
- c. an insured object has gotten beyond the control of the insured while regaining control of it is not to be expected;
- d. the cost of repair exceeds the sum insured of an insured object.
The cost of repair does not include the costs of raising, refloating and towing the object from the location of the disaster to the shipyard.

1.9 NUCLEAR REACTION

An nuclear reaction in which energy is released, such as nuclear fusion, nuclear fission, artificial and natural radioactivity;

1.10 ARMED CONFLICT

Any situation in which states or other organised parties combat each other, or at least the one the other, with the use of military force. Armed conflict is deemed to include the armed action by a Peacekeeping Force of the United Nations;

1.11 CIVIL WAR

A more or less organised violent struggle between inhabitants of the same state in which a significant part of the inhabitants of that state are involved;

1.12 INSURRECTION

Organised violent resistance within a state directed against the public authorities;

1.13 CIVIL COMMOTION

More or less organised violent acts occurring at various locations within a state;

1.14 RIOTS

A more or less organised local violent movement directed against the public authorities;

1.15 MUTINY

A more or less organised violent movement of members of any armed force directed against the authority under which they resort;

1.16 TERRORISM

Any violent act and/or conduct committed in the form of an attack or a series of attacks connected together in time and intention, while it is likely that said attack or series has been planned and/or carried out with a view to effect certain political and/or religious and/or ideological purposes;

1.17 MALEVOLENT CONTAMINATION

The spreading (whether active or not) of germs of a disease and/or substances which may result in injury and/or impairment of health and/or may cause loss of or damage to property or may otherwise impair economic interest, while it is likely that the spreading (whether active or not) has been planned and/or carried out with a view to effect certain political and/or religious and/or ideological purposes;

1.18 PRECAUTIONARY MEASURES

Any measures taken by the authorities and/or insured parties and/or third parties in order to avert the imminent risk of terrorism and/or malevolent contamination or, if such peril has manifested itself, to minimise the consequences thereof.

ARTICLE 2 TERRITORIAL LIMITS

2.1 The insurance provides cover within the territorial limits specified on the schedule.

2.2 It is hereby provided that:

2.2.1 on the seaside, the territorial limits coincide with the coastline;

2.2.2 with respect to the Netherlands, sailing the Waddenzee is included;

2.2.3 with respect to the sea gates, the territorial limits coincide with the line connecting the tips of headlands or breakwaters;

2.2.4 with respect to the Westerschelde, the territorial limits coincide with the imaginary line Vlissingen-Nieuwesluis;

2.2.5 the insurance also provides cover within said territorial limits for any parts of the object, as well as any interests, fuels and lubricants that are part of the equipment of the object, that are temporarily, yet no longer than three months, not aboard, except in case of rebuilding, conversion, alteration or repair;

2.2.6 the object must carry the certificates required for the waters concerned at all times.

ARTICLE 3 EXTENT OF COVER

3.1 HULL

3.1.1. This insurance provides cover for any loss or damage manifesting itself during the period of insurance caused by:

3.1.1.1 an external cause;

3.1.1.2 any latent defect, unless it can be attributed to failure or omission of the insured.

Executive and supervisory staff will not be deemed to be insured parties within the meaning of this article. However, it is hereby expressly provided that the cost of replacement (including the related costs of disassembly and assembly) of the part with the latent defect, will not be for the account of the insurers.

3.1.1.3 explosion with renunciation of Section 7:951 of the Netherlands Civil Code.

- 3.1.2 In the event of loss or damage, the insured will not be required to demonstrate any external cause. However, insurers reserve the right to prove that the loss or damage was caused by an uninsured peril.

3.2 LIABILITY

- 3.2.1 This insurance provides cover for damages, including interest and costs, the insured is liable to pay to any third party pursuant to a decision given in the highest instance or a transaction effected with the consent of the insurers based on a claim due to:

3.2.1.1 collision as specified in Section 8:1001 of the Netherlands Civil Code;

3.2.1.2 the insured object having run into or hit any other movable or immovable property;

3.2.1.3 damage caused as a result of the way of navigating or by the non-compliance with any statutory provision to any other object or interest thereon, without running into or hitting it;

3.2.1.4 damage caused as a result of the way of navigating or by the non-compliance with any statutory provision to any interest other than a ship, without running into or hitting it.

- 3.2.2 The insurers do not indemnify third parties for any loss or damage other than that for which the insured or the insured object might be liable.

When assessing their liability under this article, the insurers will not refer to the nature or any defect of the insured object, provided that such is not attributable to any failure or omission of the owner or, if there is a bareboat charterer, of said bareboat charterer. Executive and supervisory staff will not be deemed to be owner or bareboat charterer within the meaning of this article.

- 3.2.3 The compensation to be paid by the insurers will not exceed the limit of indemnity stated on the schedule.

3.3 GENERAL AVERAGE

The insurers pay the general average contribution charged to the insured object, exclusive of overwintering and breaking up of ice.

3.4 DEBRIS REMOVAL COSTS

If, following a total loss of the insured object, the insured is bound by law or contract to remove the debris, or otherwise considers it reasonably necessary to remove the debris, the insurers will reimburse the debris removal costs and such up to and not exceeding the relevant amount stated on the schedule, provided that said loss is covered under the policy.

3.5 ADDITIONAL COMPENSATION

- 3.5.1 The insurers compensate the following costs:

3.5.1.1 the reasonable loss assessment costs;

3.5.1.2 the loss mitigation costs as referred to in Section 7:957 of the Netherlands Civil Code;

- 3.5.1.3 rescue and salvage charges, insofar as they have been incurred with the consent of the insurers;
 - 3.5.1.4 the costs incurred to raise, refloat and tow the object from the location of the disaster to the shipyard;
 - 3.5.1.5 the costs of defence, which are understood to mean all costs and expenses of defence and legal assistance incurred by or with the consent of the insurers, even if it concerns unfounded claims or a prosecution;
 - 3.5.1.6 if the liability of the insured has been contested by or with the consent of the insurers, the resulting additional interest and costs payable by the insured;
 - 3.5.1.7 the legal interest accrued on the part of the principal sum covered by the insurance.
- 3.5.2 Said forms of additional compensation combined will not exceed an amount equal to the limit of indemnity in respect of the claim concerned.
- 3.5.3 None of the deductibles stated on the schedule are applicable to said forms of additional compensation.

3.6 RETROACTIVE COVER

Any loss of or damage to the insured object manifesting itself within the period of insurance (including the general average contributions and costs specified in this article) will be for the account of the insurers, provided that it was caused by an insured peril, whether the actual cause arose within said period or not. The fact that the cause may have arisen outside the period of insurance, will not constitute a ground for insurers to refer to Section 7:951 of the Netherlands Civil Code.

ARTICLE 4 EXCLUSIONS

Excluded from the insurance is loss or damage consisting of, caused by, manifesting itself during or arising from:

- 4.1 construction, extension, completion, conversion and/or alteration other than as a result of a loss or damage covered under this policy;
- 4.2 wilful act or recklessness of the policyholder;
- 4.3 bodily injury;
- 4.4 damage to cargo or any other interest aboard the insured object;
- 4.5 expenses for lay days and overwintering;
- 4.6 use of a chemical, biological, biochemical or electromagnetic weapon;
- 4.7 armed conflict;
- 4.8 civil war;
- 4.9 insurrection;

- 4.10 civil commotion
- 4.11 riots;
- 4.12 mutiny;
- 4.13 terrorism, however, subject to the cover provided by the NHT Clause to be attached;
- 4.14 malevolent contamination;
- 4.15 precautionary measures;
- 4.16 nuclear reactions, regardless how the reaction has arisen.
 - 4.16.1 This exclusion does not apply to loss or damage caused by radioactive nuclides existing outside a nuclear facility which are used or designated to be used for industrial, commercial, agricultural, medical or scientific purposes, provided that a licence for the production, use, storage and disposal of radioactive substances has been issued by the authorities.
 - 4.16.2 Insofar as a third party is liable for the incurred loss or damage pursuant to the law, the exclusion remains in full force and effect.
 - 4.16.3 Law is understood to mean the Nuclear Accidents Liability Act [*Wet Aansprakelijkheid Kernongevallen*], being the special statutory regulation of liability with regard to nuclear energy.
 - 4.16.4 Nuclear facility is understood to mean a nuclear facility within the meaning of said Act.

ARTICLE 5 PUSHING AND TOWING CONDITIONS

- 5.1 The insured is free to arrange to be pushed or towed under the terms and conditions laid down by the towing service or the push tug owner.
- 5.2 Accepting said terms and conditions will not be deemed to be an act whereby the rights of the insurers are prejudiced.
- 5.3 Within the limits of the liability of the towboat or the push tug, the insurers compensate the amounts for which the insured has to indemnify the towing service or the push tug owner.
- 5.4 The liability of the insurers as referred to in 5.3 will not extend to compensation in respect of bodily injury.

ARTICLE 6 RECOURSE

Save in the event of a wilful act or recklessness of the party who caused the loss or damage, the insurers will waive their right of recourse in respect of claims paid by them against:

- 6.1 the policyholder, the owner, the bareboat charterer or the bona fide user;
- 6.2 the party who is on board the insured object with the explicit or implicit authorisation of someone who has authorising power;

- 6.3 the employer of the persons referred to in 6.1 and 6.2, if such employer is liable in said capacity for the loss or damage.

ARTICLE 7 LIMIT OF INDEMNITY

- 7.1 The insurers pay compensation in respect of any one accident up to and not exceeding the sums insured stated on the schedule, increased by the costs specified in articles 3.3. and 3.5.
- 7.2 In the event of a total loss, the insurers pay the sum insured reduced by the residual value of the insured object. In that case the risk borne by the insurers will cease to exist.

ARTICLE 8 REPAIR

- 8.1 The insurers pay the repair costs after and insofar as the repairs have been carried out under supervision of the insurers and proof of the repair costs has been furnished.
- 8.2 If no repairs are carried out because this cannot reasonably be required, parties will effect an arrangement with respect to the insurers' liability to pay indemnity.
- 8.3 In the event of a total loss, the insurers will upon payment of the amount that is for their account as a result thereof, no longer be liable for any damage to the object arisen within a period of 60 days preceding the time at which the accident causing the total loss occurred, but only insofar as such damage has not been repaired.

The insurers' liability for the costs mentioned in articles 3.3 and 3.5 remains in full force and effect.

ARTICLE 9 OBLIGATIONS IN CASE OF LOSS OR DAMAGE

- 9.1 As soon as the policyholder or the insured is aware of an occurrence that may give rise to a liability to pay indemnity on the part of the insurer(s), they are obliged to notify the insurer(s) as soon as is reasonably possible of such occurrence.
- The policyholder and the insured are obliged to accompany said notification by or otherwise follow it up as soon as possible with a written report of the circumstances that have been or may have been a factor in the occurrence of the loss or damage.
- 9.2 The policyholder or the insured is obliged to provide the insurers within a reasonable period with all information and documents which are of relevance to insurers in order to assess their liability to pay indemnity.
- 9.3 The policyholder and the insured are obliged to give their full cooperation and to refrain from doing anything that may prejudice the interests of the insurers.
- 9.4 The policyholder and the insured are obliged to enable insurers, insofar as normal circumstances allow so, to arrange for the nature and extent of the damage to be assessed before repair of the damage is commenced.

- 9.5 The policyholder or the insured is obliged to take measures to prevent or minimise loss or damage as referred to in Section 7:957 of the Netherlands Civil Code.
- 9.6 If the insurers demonstrate that the loss or damage increased due to the non-compliance with any of the obligations as referred to in 9.1 through 9.5, the insurer(s) have the right to reduce the payment of compensation by the loss they incur as a result thereof.
- 9.7 All right to make a claim is forfeited if the policyholder or the insured failed to comply with any of the obligations referred to in 9.1 through 9.5 with the intention to mislead the insurer(s), unless such misleading does not justify the forfeiture of rights.

ARTICLE 10 OBLIGATIONS OF THE INSURERS IN CASE OF LOSS OR DAMAGE

The insurers will pay the amount payable as indemnity within three months after the claim has been sufficiently substantiated.

ARTICLE 11 GUARANTEE/SECURITY

- 11.1 If the insured has to provide a guarantee or security to prevent or lift an attachment of the object, the insurers undertake to provide such guarantee or security and/or reimburse the related costs.
- 11.2 The provisions of 11.1 only apply in the event of an occurrence covered by the policy and in proportion to and limited to the part of the claim that qualifies for indemnity under the policy.
- 11.3 Any mortgagees and cessionaries of the payment of indemnity have to consent to such payments being deducted from their claims to said damages.

ARTICLE 12 PAYMENT TO THIRD PARTIES

- 12.1 The insurer(s) do not pay any compensation payable to third parties under this policy to the insured, until the insured has either submitted a receipt or furnished proof that payment to or settlement with the rightful claimant has been ensured.
- 12.2 This requirement does not apply if the insured and the mortgagees and cessionaries, if any, have authorised the insurers to make a direct payment to such third party or parties.

ARTICLE 13 NOTICES AND COMMUNICATIONS

- 13.1 All notices and communications from the insurer(s) and the policyholder intended for each other are deemed to have been duly made when directed to the broker.
- 13.2 All notices and communications from the broker directed to the policyholder named on the schedule at his last-known address, are deemed to have been duly made.

ARTICLE 14 PAYMENT OF PREMIUM AND CLAIMS

14.1 DEFINITIONS

- 14.1.1 For the application of this article "premium" is deemed to include any other amount payable in connection with this insurance.
- 14.1.2 For the application of this article "insured" is deemed to include the policyholder as well as any other party who owes the premium.

14.2 PREMIUM

- 14.2.1 The broker undertakes to pay the premium to the insurer(s) as if the broker were indebted at the moment the premium becomes payable by the insured under the insurance contract. Unless expressly agreed otherwise, the broker will pay the premium by crediting the current account of the insurer(s) for the premium payable by the insured under the insurance contract, at which point the insured will be discharged towards the insurer(s).
- 14.2.2 The insured is obliged to pay the premium to the broker. In the event that the insurance contract has been concluded through a second intermediary and the insured has paid the premium to said second intermediary, the insured will not be discharged towards the broker by said payment until the second intermediary has paid the premium to the broker.
- 14.2.3 Without prejudice to the insured's liability to pay the premium due to the broker, the insurance will only be effective for the period for which the premium has been paid to the broker, as well as for the period for which the broker has granted the insured credit. This will be interpreted to mean that the insured is deemed to have been granted credit, unless this has been cancelled in writing.
- 14.2.4 Upon conclusion of this insurance contract the broker has been irrevocably authorised by the insured to release the insurer(s) from their obligations under the insurance contract prematurely if the insured or, in case this insurance contract has been concluded through a second intermediary, said second intermediary fails to pay the premium to the broker.

The broker will not release the insurer(s) from their obligations without prior written notice of such intention to the insured.

- 14.2.5 In case of the insured being bankrupt or being granted a moratorium, the credit referred to under 14.2.3. is cancelled immediately and the insurer(s) are released from their obligations under the insurance contract as referred to under 14.2.4. These legal consequences take effect solely by the bankruptcy or moratorium being ordered without prior notice of default being required. The liquidator or administrator is authorised for a month after the date on which the bankruptcy or the moratorium was ordered, or, if this is later, until 14 days after the broker notified him of the credit being cancelled, the insurer(s) being released from their obligations and of the authority to arrange for cover to be reinstated, to arrange for cover to be reinstated, also in respect of any loss or damage occurred after the date of the bankruptcy or moratorium order, if and insofar as he has paid the total premium due.

14.3 PAYMENT OF CLAIMS AND RETURN OF PREMIUM

- 14.3.1 Unless the party entitled prefers a different manner and has given prior written notice thereof to the insurer(s), the broker will debit the current account of insurer(s) for any payable amount of indemnity and return of premium. The insurer(s) will thereby be discharged as soon as the payment of indemnity has been received by the party entitled or otherwise has been settled with said party in accordance with the law or any existing arrangement between said party and the broker. If the insurer(s) have paid the damages to the broker and the latter defaults on payment thereof to the party entitled, the insurer(s) have the right to reclaim the damages from the broker if they are called upon by the party entitled to make a renewed payment. If the broker has paid the damages received from the insurer(s) to the second intermediary, but the latter defaults on payment thereof to the party entitled, the broker will have the right to reclaim the damages from said second intermediary if he is either called upon by the party entitled to make a direct payment or the insurer(s) reclaim said damages from the broker as provided for in this paragraph.
- 14.3.2 The broker will pay any amount of indemnity and return of premium to the party entitled thereto. However, the broker is only liable to pay the balance that remains after said amount of indemnity and return of premium have been set off against any receivables from the insured under any other insurance, whether due and payable or not, yet undisputed at the time the liability to pay arises. Nevertheless, such a setoff will not take place in case of insurances which have been made out to bearer or order, unless the policyholder is entitled to the payment of indemnity and in case of compulsory liability insurance. If the entitlement to payment of indemnity is subject to a pledge as referred to in Section 3:229 of the Netherlands Civil Code, or a benefit as referred to in Section 3:283 of the Netherlands Civil Code, as well as in case of a non-compulsory insurance against liability, the settlement will not extend beyond that which is payable by the policyholder in respect of the insurance under which the payment is made.

ARTICLE 15 LIMITATION OF LEGAL CLAIM

- 15.1 Any legal claim against the insurer(s) to pay indemnity becomes prescribed by the lapse of three years after the start of the day following the one on which the party entitled to the payment first had knowledge of the claimability thereof.
- 15.2 The limitation period is interrupted by a written notification whereby payment of indemnity is claimed. A new limitation period of three years becomes effective at the start of the day following the one on which the insurer(s) either admitted the claim or explicitly notified to have refused the claim.
- 15.3 In case of insurance against liability, the limitation period is, contrary to the provisions of article 15.2, first sentence, interrupted by each negotiation between the insurer(s) and the party entitled to the payment or the injured party. In that case a new limitation period of three years becomes effective at the start of the day following the one on which the insurer(s) either admitted the claim or explicitly notified the party with whom they have been negotiating and, if this is another, the party entitled to the payment that they cease the negotiations.

ARTICLE 16 APPLICABLE LAW AND DISPUTES

- 16.1 This insurance contract is governed by the laws of the Netherlands.
- 16.2 Any dispute arising from or connected with the performance of this contract is in the first instance subject to the jurisdiction of the competent court in Amsterdam or Rotterdam.

*The VNAB policy conditions and clauses are **not binding**. They merely serve as specimen which may be customised by alterations, additional provisions and/or clauses. VNAB market players are free to offer other policy conditions to their customers.*

As market players are free to use them at their own discretion, the VNAB cannot assume any liability for the application or contents of the model conditions and clauses.

In case of any difference between the original Dutch wording of the model conditions and clauses and the English translation, the Dutch wording will prevail.

For previously published (older) conditions, please contact the VNAB. The official title of these conditions is “Nederlandse Beurs-Cascopolis voor de Binnenvaart 2011”.

The wording of the Conditions “Dutch Bourse Hull Policy for Inland Shipping 2011” is available via the website of the Netherlands Insurance Exchange Association, www.vnab.nl