

## TRANSLATION

### CONDITIONS “DUTCH BOURSE CARGO POLICY 2006”

#### Art. 1. Contingency

This contract shall meet the contingency requirement as referred to in Section 925 of Book 7 of the Dutch Civil Code, if and insofar as the loss or damage in respect whereof indemnity is claimed 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 assured had arisen therefrom or would arise therefrom under normal circumstances.

#### Art. 2. Extent of cover

1. Within the context of this policy the term interests shall be understood to mean interests in which the policyholder trades, unless otherwise provided.
2. The sum insured stated in the policy shall also apply as agreed value between the assured and the insurers.
3. Any profit or increase in value, regardless whether this has been included in the estimate under the policy or not, shall in the event of loss of or damage to the interests be indemnified without evidence of such profit or increase in value being allowed to be demanded.
4. Except as provided in article 3, the sum insured shall apply as the limit of indemnity the insurers may be held liable to pay as a result of one single occurrence. Should the interests insured under the policy be affected by consecutive insured occurrences, then the insurers shall indemnify all loss or damage, regardless whether the total amount thereof exceeds the sum insured.

#### Art. 3. Payments in excess of the sum insured

1. If and insofar as the assured is entitled to full or partial reimbursement of contributions in general average such amount shall be for the account of the insurers.
2. The insurers shall reimburse the costs of measures which are taken by or on behalf of the policyholder or any insured party and are reasonably required in order to avert the imminent risk of loss or damage that – once occurred – is covered under the policy, or in order to minimise such loss or damage. Within this context, costs of measures shall also include any damage to interests which are employed as part of the measures herein referred to.
3. In case of forced discharge or unloading in a port of distress on account of an insured period, the cost of unloading, storage and reloading, as well as the additional forwarding charges shall also be for the account of insurers even if the amount insured will be exceeded in consequence thereof.

#### Art. 4. Voyage insured

1. The risk for the insurers attaches the moment the interests lying in the warehouse or place of storage at the place of dispatch mentioned in the policy ready to commence the voyage insured, are being raised or removed in a comparable way in order to commence the voyage insured.  
The risk continues without interruption during the ordinary course of transit and ends the moment the goods have arrived at the destination mentioned in the policy, in the place in the warehouse or place of storage destined for this purpose by the consignee, provided the policyholder and/or the assured has the goods transported in the normal way or as agreed with the insurers.

2. Subject to the provisions of paragraph 4. the provisions of paragraph 1 shall remain in force, also in case of interruption in transport, deviation, change of voyage or means of conveyance or extension of the voyage, owing to circumstances beyond the assured's control on the understanding that, if in consequence thereof the voyage or duration thereof is extended or the insurers' risk increased, the insurers are entitled to an appropriate additional premium, unless these circumstances are caused by an insured peril.
3. Should, after the insurers' risk has attached, the assured either terminate the voyage before the interests have reached the destination mentioned in the policy or have the interest forwarded to another place before they have reached the place where the risk would end in accordance with the provisions of paragraph 1, then, unless otherwise agreed, insurers' risk shall terminate on expiry of 15 days after arrival of the goods in the place where the voyage is terminated or changed, or so much sooner as:
  - a. the interests have been sold and delivered at such place to the buyer(s) or
  - b. the transport of the interests to such other destination commences or
  - c. the interests are stored or handled for distribution or otherwise on the instruction of or in the name of the assured.

Should the discharge or delivery have been delayed in a consequence of a lawful impediment, to be proved by the assured, the above-mentioned maximum period of 15 days shall be suspended for the duration of such impediment, subject however to the provisions of paragraph 4.

4. In case of transport wholly or partly by an oversea vessel the insurers' risk terminates in any case on expiry of 60 days after the interests have been unloaded from the oversea vessel at the final port of discharge, unless the insurers' risk has already terminated in accordance with other provisions of this policy.

#### **Art. 5. Return cargo**

If the insured interests should be returned, the insurers' liability will continue without interruption on entirely the same conditions during stay and return voyage at a premium to be agreed, provided that insurers have been notified and have accepted this extension of risk.

#### **Art. 6. Transport and storage**

1. Should the assured have the transport and storage effected on conditions used for such transport and storage in the normal course of business, such acceptance of those conditions shall not confer on the insurers either a claim on or a defence against the assured, founded on Title 17 of Book 7 of the Dutch Civil Code.
2. In so far as they are not explicitly mentioned in the policy as assured or co-assured, carriers or persons to whom the transport, handling or storage of the goods has been entrusted, cannot derive any benefit from the existence of this insurance.

#### **Art. 7. Method of loading**

This insurance shall be in force irrespective of how and where the interests have been loaded or stowed into or on to the means of conveyance.

If the interests on board an oversea vessel should have been loaded on deck, the insurance shall not apply in respect of any sea-water damage and damage resulting from the interests being jettisoned or washed overboard, unless such loading on deck is customary or the insured can give satisfactory proof that the interests have been loaded on deck without his consent.

Consent to load on deck shall not be assumed exclusively on the ground that transport has been effected on the condition that the carrier shall be allowed to stow "in and/or over deck" or on a similar condition.

#### **Art. 8. Seaworthiness or sound condition of the means of transport**

The insurers shall not plead unseaworthiness or defectiveness of the means of conveyance, unless the insured were aware of the unseaworthiness or defectiveness. If such is the case, loss or damage caused by unseaworthiness or defectiveness shall not be indemnified.

#### **Art. 9. General average**

1. The contribution in general average as levied on the insured interests under the Sections 610 and 1020 of Book 8 of the Dutch Civil Code or any foreign law or under the stipulations of the contract of carriage shall be allowed notwithstanding anything contained in article 16.
2. Should the amount insured be lower than the contributory value assessed in the average adjustment or the value stated in the deposit receipt, then the insurers shall be liable to pay only a pro rata share of the contribution in general average. When calculating this contribution, particular average which has been taken into account in the assessment of that value and which must also be paid by the insurers, shall be deducted from the amount insured.
3. If and in so far as there will be no apportionment in general average because ship, cargo and freight or any of these interests are under one control, a procedure shall be adopted as if there had been an apportionment in general average over such interests under one control in accordance with the York-Antwerp Rules as mentioned in Section 613 of Book 8 of the Dutch Civil Code, the General Average Rules International Association the Rhine vessels' register [*Averij-grosseregels IVR*] as referred to in Section 1022 of Book 8 of the Dutch Civil Code or the applicable law at the place where the voyage is terminated.
4. General average deposits
  - a. If the assured is required to make a deposit as a guarantee that the general average contribution or expenses exclusively chargeable against the cargo shall be paid, the insurers shall, on surrender of the deposit receipt, be liable to pay to the assured the amount mentioned in this receipt, with due observance of the provisions of sub d., provided the general average contribution of the expenses referred to are chargeable to the insurers.
  - b. The rights arising from the deposit shall be assigned to the insurers.
  - c. Payment to the assured of the amount referred to under a. by the insurers shall not exempt the insurers from their obligation to pay the amount the assured may have to contribute in general average, in case the deposit referred to under a. in security of said contributions should be inadequate or should be lost in whole or in part without the assured his fault.
  - d. When calculating the amount to be paid by the insurers under a. the provisions of paragraph 2 will apply, on the understanding that the value declared by the assured to the average adjuster will supersede the contributory value of the interests mentioned in that paragraph.
  - e. If, after the average adjustment has become binding, the contributory value of the goods should prove different to the declared value, then the amount due from the insurers on account of general average shall be assessed in accordance with the provisions of paragraph 2, with due observance to the contributory value.

#### **Art. 10. Demurrage and wintering**

The insurers will never pay charges for demurrage and wintering, even if these charges could be claimed as contribution in general average within the meaning of article 9 of the policy, unless these charges can also be considered as general average according to the York-Antwerp Rules as referred to in Section 613 of Book 8 of the Dutch Civil code or the Rhine Rules International Association the

Rhine vessels' register [*Rijnregels IVR*] as referred to in Section 1022 of Book 8 of the Dutch Civil Code.

#### **Art. 11. Assessment of claims**

1. For the assessment of the loss and/or damage the interested party shall apply to the average agent mentioned in the policy or, should no agent be mentioned, to the nearest Lloyd's agent or any other average agent of good repute.
2. In the event of the insured interests arriving partially damaged, a surveyor shall assess the gross value of the interests (value inclusive of freight and expenses) had they arrived intact at the port of discharge or their destination, which shall be deemed to be the sound market value, as well as the gross value in their present condition. The insurers shall indemnify the part of the sum insured that is in proportion to the difference between the aforementioned values, unless otherwise provided for in the schedule.
3. The fees and expenses of the average agent shall be paid by the insured, but shall be reimbursed to the insured by the insurers if the loss or damage itself is covered under this insurance.

#### **Art. 12. Overdue vessel**

If after a reasonable lapse of time no news has been received of the means of conveyance in which the interests are transported, those interests will be considered to be lost, provided the policyholder and/or the assured indicating that the means of conveyance is missing.

#### **Art. 13. Interests of various kinds or values**

In order to assess the damage of interests of various kinds and values, the amount insured for the various interests will be calculated by apportioning the total sum insured in proportion to the invoice value of the interest. Failing an invoice value the sound market value at destination will be taken instead.

#### **Art. 14. Packing**

1. In the event of depreciation of the interest solely in consequence of loss of or damage to the packing – including the material used for indicating mark and brand – the cost of repairing the packing will be for the account of the insurers, in so far as compensation for damage to the interests is not excluded from the insurance.
2. Should such repair not be possible or the cost thereof exceed the depreciation referred above, the insurers shall compensate for the amount of the depreciation. If such repair should not entirely eliminate the depreciation, the insurers shall make good the remaining loss in value.

#### **Art. 15. Illegality**

This insurance shall not cover any loss of or damage to interests which are subject to any international treaty pertaining to drugs upon commencement of the transport, or interests trade wherein is not permitted pursuant to the law, bye-law or regulation, regardless whether the Netherlands are or will be a party to any such treaty or not, unless:

1. the name of the interests, as well as the name of the exporting country and the country of destination are stated in the policy,  
  
and
2. the evidence of the loss or damage is accompanied either by a licence issued by the government of the country of destination showing that import into that country has been agreed by that government or by a licence issued by the government of the exporting country

showing that the export to the destination indicated has been approved by the latter government,

and

3. the interests have been transported by a customary route.

#### **Art. 16. Inherent vice**

1. Unless expressly otherwise agreed, loss or damage proximately arising from inherent vice is excluded from the insurance.
2. In the event of loss or damage due to delay, the insurers shall only be liable to pay indemnity if the delay has been caused by an occurrence against which said interests are insured and the means of transport which carries said interests has been damaged as a result thereof.

#### **Art. 17. Evident negligence by an insured party**

Contrary to Section 952 of Book 7 of the Dutch Civil Code, the insurers shall not indemnify any loss or damage caused by evident negligence by any insured party.

Evident negligence shall be deemed to be the case if it involves conduct which, even though an insured party may not be aware thereof, entails such a substantial risk of loss or damage by objective standards that an insured party should have been aware of said risk and by not refraining from such conduct fails to exercise due care to preserve interests from loss or damage to a serious extent.

#### **Art. 18. Payment of premium and indemnity**

1. Definitions
  - 1.1. For the application of this article 'premium' shall also be understood to mean any other amount due in connection with this insurance.
  - 1.2. For the application of this article 'assured' shall also be understood to mean the policyholder as well as any other party who owes the premium.
2. Premium
  - 2.1. The 'broker' shall undertake to pay the premium to the insurers as if the broker were indebted at the moment the premium is due by the assured pursuant to the insurance contract. Unless expressly otherwise agreed, the premium shall be paid by the broker by crediting the insurers on current account for the premium due by the assured pursuant to the insurance contract, at which point the assured shall be discharged towards the insurers.
  - 2.2. The assured shall be obliged to pay the premium to the broker. In case the insurance contract has been concluded through a second intermediary and the assured has paid the premium to said second intermediary, the assured shall not be discharged towards the broker by said payment until the second intermediary has paid the premium to the broker.
  - 2.3. Without prejudice to the assured's liability to pay the premium due to the broker, the insurance shall 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. For the purposes of interpretation hereof, the assured shall be deemed to have been granted credit, unless this has been revoked in writing.
  - 2.4. On the assured's acceptance of this contract the broker shall be deemed to have been irrevocably authorised by the assured to release the insurers of their obligations under this contract prematurely, if the assured or, in case this contract has been concluded through a second intermediary, said second intermediary fails to pay the premium to the broker. The broker shall not release the insurers of their obligations without prior written notice of such intention to the assured.
3. Payment of indemnity and return of premium
  - 3.1. Unless the party entitled prefers a different manner and has given prior written notice thereof to the insurers, the broker shall debit the insurers on current account for any payable indemnity and return of premium.

The insurers shall thereby be discharged as soon as the payment of indemnity has been received by the party entitled thereto or otherwise has been settled with said party in accordance with the law or any existing arrangement between him and the broker.

If the insurers have paid the damages to the broker and the broker defaults on payment thereof to the party entitled, the insurers shall 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 insurers to the second intermediary, but the latter defaults on payment thereof to the party entitled, the broker shall 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 insurers reclaim said damages from the broker as provided for in this paragraph.

- 3.2. The broker shall pay any indemnity and return of premium to the party entitled thereto. However, the broker shall only be liable to pay the balance that remains after said indemnity and return of premium have been set off against any receivables from the assured under any other insurance, whether due and payable or not, yet undisputed at the time the liability to pay arises. Nevertheless, such a setoff shall 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 229 of Book 3 of the Dutch Civil Code, or a benefit as referred to in Section 283 of Book 3 of the Dutch Civil Code, as well as in case of a non-compulsory insurance against liability, the settlement shall not extend beyond that which is payable by the policyholder in respect of the insurance under which the payment is made.

#### **Art. 19. Obligations in case of loss or damage**

1. As soon as the assured has or should have knowledge of an occurrence which may give rise to a liability to pay indemnity on the part of the insurers, they shall be obliged to notify the insurers as soon as is reasonably possible of such occurrence.
2. The assured shall be obliged to supply the insurers within a reasonable period with all information and documents which are of relevance to the insurers in order to assess their liability to pay indemnity.
3. The assured shall be obliged to do and concur in doing all such things as may be necessary and to refrain from anything which may prejudice the interests of the insurers.
4. The assured shall be obliged to take measures to preserve interests from loss or damage or to minimise loss or damage as referred to in Section 957 of Book 7 of the Dutch Civil Code.
5. If the assured has failed to comply with any of the obligations referred to in paragraph 1 up to and including 4 of this article, the insurers shall be allowed to reduce the payment of compensation by the loss they incur as a result thereof.
6. All right to make a claim shall be forfeited if the assured has failed to comply with any of the obligations referred to in paragraph 1 up to and including 4 of this article with the intention to mislead the insurers, unless their misleading does not justify the forfeiture of rights.

#### **Art. 20. Forfeiture of rights**

1. Any legal claim against the insurers to pay indemnity shall become prescribed by the lapse of three years after the start of the day following the one on which the insured first had knowledge of the exigibility thereof.
2. The limitation period shall be interrupted by a written notification whereby payment of indemnity is claimed. A new limitation period shall become effective at the start of the day following the one on which the insurers either admitted the claim or notified unequivocally by registered post to have refused the claim stating as unequivocally the effect referred to in paragraph 3.
3. In the event of a refusal, the claim shall become prescribed by the lapse of twelve months.

### **Art. 21. Recovery from third parties**

1. Should they deem such procedure desirable with a view to recovery from third parties, the insurers are always entitled to suspend payment until such recovery has been effected, on the understanding that the insurers shall, if the assured should so desire, grant to the assured an interest-free loan up to the amount which would have to be paid on settlement of the claim; if the insurers should withdraw this loan, the assured is entitled to set off his claim under the insurance against this loan.  
If the assured has received an interest-free loan as referred to above, the assured 's claim on the insurers cannot be assigned, substituted or his rights whatsoever transferred or passed.
2. The insurers shall be entitled:
  - a. either to take all measures necessary to obtain recovery from parties in the assured's name,
  - b. or to demand that all the assured's rights as against third parties shall be transferred to the insurer or to a confidential representative to be nominated by him, in order that they can effect recovery from third parties in their own name or in the name of the confidential representative.In either case all expenses incidental to the recovery are for the insurers' account.
3. Also before the insurers have paid, the assured shall furnish the insurers with all documents and information they may require or consider useful for the purpose of effecting recovery from third parties and making preliminary arrangements to effect such recovery.

### **Art. 22. "Both to blame collision"- clause**

If the bill of lading contains the so-called both to blame collision clause, the insurers shall be liable for the financial consequences of a claim, made against the assured by virtue of this collision clause. In the event of the shipping company and/or charterer submitting a claim against the assured under this clause, immediate notice of this claim shall be given to the insurers, who will be entitled to contest this claim at their expense, if necessary by action at law. The policyholder and/or the assured undertakes to give full co-operation hereto.

### **Art. 23. Interest**

The insurers shall only allow interest accruing from three months after submission of the statement of claim and the documents relating thereto, provided a writ in this respect has been issued against the insurers within three months afterwards. Should the writ be issued later than 6 months after submission of the statement of claim, no interest is due before the day of the writ.

### **Art. 24. Free of war risks and strike risks**

Unless expressly otherwise agreed in this policy, the insurance is deemed to have been effected under the proviso 'free of war risks and free of strike risks'.

The term "war risks" is understood to mean:

- war and warlike operations, civil war, revolution and insurrection,
- the effect of derelict torpedoes, mines, bombs and other such implements of war perils mentioned in the preceding paragraph, even if the damage should have occurred in time of peace.
- capture and detainment by order of any authorities;

the term "strike risks" is understood to mean:

- acts of violence committed in connection with strike, lock-out of workman and labour disturbances,
- acts of violence committed for political motives,

- rebellion, riots and local disturbances,

insofar as not coming under "war risks".

In the event of war risks or strike risks occurring to the interests, to the means of conveyance or to both, the insurance shall not terminate and the insurers' liability shall neither cease nor be restricted, irrespective of whether the present insurance covers any form of war risks or strike risks or not. Nor shall the insurance terminate or the insurers' liability cease or be restricted by the performance of any act or failure to perform such act by or on behalf of the assured or any third party, if the performance or the failure to perform is in consequence of the war risks or strike risks referred to or for anxiety thereof. In any case the insurers' liability shall cease after confiscation, pre-emption, requisitioning of property, expropriation or similar acts performed by or by order of any Dutch or foreign military or civil authority or by order of any Dutch or foreign public body.

The provisions of this article shall prevail over any statutory regulations containing different provisions.

#### **Art. 25. Transfer of property or interest by an act of war risks or strike risks**

Anyone who has procured the ownership of or any interest in the goods by any act, which could be defined as "an act of war" or "an act of strike" cannot derive any rights for this policy.

#### **Art. 26. Law and practice**

1. This insurance is subject to Dutch law and practice.
2. Any dispute arising from or connected with the performance of this contract shall be subject to the exclusive jurisdiction of the competent court in Amsterdam or Rotterdam except as may be expressly provided herein to the contrary.

#### **Art. 27. Final provision**

The headings shall neither alter nor affect the contents of the articles.

In case of any difference between the wording of these conditions and the Conditions 'Dutch Bourse Cargo Policy 2006' which were filed on 7th December 2005 with the Netherlands Insurance Exchange Association, the provisions of the latter shall prevail.

These conditions has been translated from the original Dutch wording. In case of differences between the wording of these conditions and the original Dutch wording, the provisions of the latter shall prevail.

The wording of the Bourse conditions is available via the website of the Dutch Co-Insurance Association, [www.vnab.nl](http://www.vnab.nl).