

# General Conditions of Marine Insurance on Goods

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Translation: The original wording in German shall be decisive in the case of dispute.

**The assured under this agreement shall be on equal footing with: the holder of title to claim; the party contracting the insurance; and the persons for whose acts the assured, the holder of title to claim, or the party contracting the insurance are responsible.**

## A. Scope of insurance

### Art. 1 Object of the cover

The insurance covers the risks to which the goods are exposed in the course of the insured voyage insofar as specific risks are not expressly excluded. Where no other agreement has been concluded, the restricted insurance in accordance with Art. 2 shall apply.

### Art. 2 Restricted insurance

The insurance covers loss and damage only when they are the direct consequence of one of the following events (so-called specified accidents):

- shipwreck
- stranding
- leaks making it necessary to put in at a port of refuge
- jettison and washing overboard of entire packages
- collision, overturn or breakdown of the conveyance
- derailment
- falling aircraft or spacecraft or parts thereof
- emergency landing or ditching
- collapse of structures
- fire, explosion, lightning, earthquake, volcanic eruption, flooding, avalanche, landslide, snowslip, falling rock, flash flood, hurricane-like storm (wind speed in excess of 100 km per hour)
- falling of goods during loading, transshipment or discharge.

Theft and disappearance of entire packages (goods and packing) or of whole consignments are also covered.

### Art. 3 Special cases

Unless otherwise agreed, the following are insured only under art. 2:

- unpackaged goods
- goods being returned
- used goods
- goods transported in damaged condition
- goods not packed in containers and stored on deck with the knowledge of the assured.

### Art. 4 Insurance against all risks

The insurance covers loss and damage.

### Art. 5 Inclusions common to all forms of cover

Also insured by all forms of cover are:

- a) General average contributions chargeable to the insured goods in accordance with a legally valid statement, as well as goods sacrificed in general average, the foregoing subject to the exclusions of art. 6.
- b) Insofar as there is an insured loss or damage or this immediately threatens,
  - the costs of the surveyor's intervention

- the costs incurred for the purpose of averting or mitigating the loss or damage.
- c) Should there be an insured event, the additional costs of transshipment, storage and forwarding, insofar as the assured considers this to be necessary in the circumstances or the insurer orders it to be carried out.
- d) Additional costs for unloading, storage and transport of insured goods as far as the pre-agreed destination after release of the cargo from a vessel which was confiscated, held up or diverted to a harbour other than that which was originally intended, due to non-conformance with International Safety Management Code requirements without knowledge of the assured.
- e) Loss and damage as the consequence of the insolvency of or delayed payment by the owner, charterer or operator of a means of transport or other financial dispute with the parties named, where the assured did not select or materially influence the selection of these parties.

### Art. 6 Exclusions common to all forms of cover

- a) The insurer is not liable for the consequences of:
  - seizure, confiscation or temporary seizure (quarantine) by government authority or power, subject to art. 6e
  - delay, howsoever caused, in transit or delivery
  - deliberate actions of the assured; in the case of gross negligence of the assured, the insurer is entitled to reduce his payment commensurate with the degree of negligence
  - false declaration
  - infringement of import, export or transit regulations as well as of currency and customs regulations
  - infringement of carrier's regulations with the assured's knowledge
- b) Furthermore, the insurer is not liable for loss or damage attributable to:
  - atmospheric humidity
  - influence of temperature
  - the nature of the goods such as spoiling, heating, spontaneous combustion, shrinkage, wastage and ordinary leakage
  - vermin originating in the insured goods
  - the unsuitable condition of the goods for the insured voyage
  - inadequate or insufficient packing
  - inappropriate stacking in the conveyance or container by the assured
  - normal wear and tear
  - nuclear energy and radioactivity. This exclusion does not extend to damage caused by radioisotopes and equipment for the production of ionising radiation (e.g. for medical purposes)

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- the use of chemical, biological, biochemical or electromagnetic weapons.
- c) The following are also excluded:
  - damage to the packing unless specifically insured
  - liability to third parties for loss or damage resulting from by the insured goods
  - indirect damage, such as
    - losses not directly sustained by the insured goods (e.g. loss of interest, difference of exchange, loss of market, loss of use or consequential loss)
    - compensation for effort expended in connection with loss or damage
    - demurrage and supplements of freight of whatever nature as well as costs other than those covered in accordance with art. 5b, 5c or 5d.
- d) This cover is void if with the assured's knowledge,
  - the means (e.g. vehicles, containers or handling equipment) used to transport the goods are inappropriate
  - routes are used which are unsuitable or officially closed to traffic.
- e) Unless otherwise agreed, this cover does not apply to the consequences of political or social risks including:
  - war
  - warlike occurrences (e.g. occupation of foreign territory, border incidents)
  - civil war, revolution, rebellion
  - preparations for war or measures of war
  - explosion or other effects of mines, torpedoes, bombs or other engines of war
  - confiscation, requisition, sequestration, seizure or detention by a government, authority or power
  - strike, lockout and disturbances (disturbances are understood as violent and malicious acts committed in relation with routs, riots and civil commotions including any associated pillaging)
  - terrorism (An act of terrorism shall mean an act or threat of violence in pursuit of political, religious, ethnic, ideological or other purposes which may result in putting the public or any section of the public in fear or influencing any government or governmental organisation.).

Moreover, this cover does not apply to cases where the cause of the loss or damage cannot be ascertained but is likely to be the consequence of one of the foregoing events.

#### **Art. 7 Accepted modes of transportation**

Provided no other agreement has been made, insurance cover applies only when the means of transport used are officially certified.

- a) For sea journeys, the following shall also apply:
  - Steel, seagoing ships with their own mechanical propulsion shall be classified by a full or associate member of the International Association of Classification Societies (IACS – see [www.iacs.org.uk](http://www.iacs.org.uk) for a list) not older than 25 years (for oil tankers not older than 15 years)
- and
- Ships as well as the shipping companies (shipowners) shall be certified in accordance with the International Safety Management Code (ISM Code).
- b) For journeys on internal waterways, the following shall also apply:
  - Ships shall be certified for the transport of goods. For ships used on the river Rhine, classification by the

International Association of the Rhine Shipping Register suffices as proof of suitability for the transport of goods.

If the above requirements are not met, but without the knowledge of the assured, insurance cover shall nonetheless remain in force. As soon as the assured becomes aware of irregularities, he is required to report these to the insurer.

## **B. Duration of insurance**

### **Art. 8 Commencement and termination**

The insurance attaches as soon as the goods are loaded onto the means of transportation or into the container in which they undertake the insured journey. It terminates when, at the end of the insured voyage, the goods are unloaded from the means of transportation or the container. If no vehicle or means of transportation is used at departure point or for delivery, the insured journey begins with the hand-over of the goods for the purpose of immediate transport to the person charged with such transport and ends as soon as they reach the consignee.

### **Art. 9 Delay**

In the event of delay in the insured voyage, cover is limited to 30 days for any one delay. Where the delay is due to circumstances beyond the assured's control, cover shall remain in force for a further 30 days. At intermediate places delay is understood to be the period of time between the arrival of the conveyance and the departure of the on-carrying conveyance, counting the day of arrival and the day of departure.

Cover during delay may be modified by special agreement.

## **C. Definition of values**

### **Art. 10 Insurable value**

The insurable value corresponds to the value of the goods at the place and time of commencement of the insured voyage, plus freight, insurance and other charges incurred up to the place of destination.

In respect of trade goods the value thus determined may be increased by the amount of the buyer's expected profit: in the absence of a relevant agreement by as much as 10%.

Customs and excise duties may also be insured by special agreement.

### **Art. 11 Replacement value**

The replacement value is that which the goods would have had at destination at the time of the occurrence of the loss or damage. In the absence of proof to the contrary the replacement value is assumed to correspond to the insurable value.

### **Art. 12 Sum insured**

The sum insured constitutes the limit of all indemnities for loss or damage whether arising from one or more events. The insurer shall nevertheless reimburse the general average contributions, in accordance with art. 5a, as well as the costs in accordance with art. 5b, 5c and 5d even if, together with the aforementioned indemnities, they exceed the sum insured.

### **Art. 13 Underinsurance**

Whenever the sum insured is less than the replacement value, this insurance covers only such proportion of the loss or damage, general average contributions or expenses as the sum insured bears to the replacement value.

### **Art. 14 Double insurance**

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The assured is bound to notify the insurer in writing of double insurance as soon as he becomes aware of its existence. In case of double insurance the liability of the insurer is subsidiary only.

## **D. Assured's duty of disclosure**

### **Art. 15 Duty of disclosure**

On taking out the insurance and for every declaration of consignment thereafter, the assured is bound to disclose without further request to the insurer all circumstances likely to influence the assessment of the risk. This obligation exists even if it is presumed that such circumstances are already known to the insurer or his representative.

Whenever the insurance is contracted for the account of a third party or by an agent of the assured, circumstances known to the assured or to his agent or which ought to be known to them shall also be disclosed to the insurer.

Any reticence, fraud, false statement or misrepresentation renders the insurance null and void.

### **Art. 16 Alterations in the course of the insured voyage**

The goods are held covered in the event of calling at an intermediate port or of deviation or transshipment not agreed upon at the time of the conclusion of the contract as well as in the event of variations resulting from the exercise of any liberty granted to the carrier under the contract of affreightment. The assured is nevertheless bound to notify the insurer of any increased risk as soon as he becomes aware of it.

### **Art. 17 Increase of risk**

Should the assured cause the risk to be materially increased – the alterations mentioned in art. 16 excepted – the insurer is thenceforth no longer bound by the contract. However, should the risk be materially increased due to circumstances beyond the control of the assured, the latter must notify the insurer immediately on becoming aware of it; otherwise cover ceases from the time the risk is increased.

## **E. Obligations in case of loss or damage**

### **Art. 18 Notification of loss or damage and salvage**

The assured must notify the insurer forthwith of any loss or damage which comes to his knowledge. Furthermore, in the event of loss or damage, it is the duty of the assured to take forthwith all measures for the preservation and salvage of the goods and for mitigating the loss or damage. The insurer also may take such measures. In the event of non-compliance with these obligations, the indemnification can be reduced commensurate with the assured's degree of fault.

### **Art. 19 Preservation of rights of recovery**

All rights of recovery against third parties who may be held responsible for the loss or damage shall be preserved. In particular the following steps shall be taken:

- a) Outwardly apparent loss or damage must be notified to the carrier in writing before delivery of the goods is taken.
- b) Whenever loss or damage is presumed, the necessary reserves must be lodged within the period prescribed by law or contract.
- c) The carrier must be summoned to a joint survey of the loss or damage.

The assured is liable for any act or omission prejudicing the rights of recovery.

### **Art. 20 Survey**

- a) In case of loss or damage in Switzerland the insurer, and abroad his surveyor, must be called in forthwith for survey purposes and to take whatever steps may be necessary.
- b) Should the loss or damage not be outwardly apparent, survey must be requested within one week of the delivery of the goods to the consignee.
- c) If the insurer has not appointed any surveyor, application shall be made to the "Lloyd's Agent" or if there is no such agent to another competent surveyor.
- d) If the loss or damage occurred during carriage by land, sea, air or courier or packet express service, the relevant transport company shall be required to issue an official report.
- e) The costs occasioned by the surveyor's intervention are to be paid by the applicant and are refundable by the insurer if, and to the extent that, the claim is recoverable under the policy.
- f) This insurance does not cover any claim where the loss or damage has not been ascertained in the prescribed manner.

## **F. Assessment of loss or damage and claims**

### **Art. 21 Expert appraisal**

If the parties cannot agree as to the cause, nature and extent of the loss or damage, an expert shall be called in. Failing agreement as to the choice of expert, each party shall appoint one. Failing agreement between the experts they shall appoint an umpire or have one appointed by the competent authority. The expert's report shall contain all the information necessary to determine the insurer's obligation to indemnify and to assess the amount of the loss or damage. Each party shall carry the costs for the expert it names. The costs for the umpire shall be carried by both parties equally.

### **Art. 22 Claims calculation**

In case of damage the depreciation shall be expressed as a percentage of the sound value. This percentage, applied to the replacement value, gives the amount of the claim. If a damaged object can be repaired, the claim calculation is based on repair costs.

Reductions in value after repair are not insured.

The insurer or the surveyor can request that the value of the damaged goods be ascertained by public auction. Should the goods, as a result of damage, be sold before reaching their destination, the net sale proceeds belong to the person holding title to claim; the difference between the replacement value and the net proceeds constitutes the amount of the claim.

In case of loss the amount of the claim is such proportion of the replacement value as the lost part bears to the whole.

The insurer does not reimburse any freight, customs and excise duties or other charges which may be saved as a result of an insured event. Moreover, any compensation received by the assured from third parties shall be deducted from the amount of the insurer's settlement.

### **Art. 23 Transfer of rights of ownership**

In the following cases the assured is entitled to claim from the insurer payment of the replacement value against surrender of all property rights to the goods and all rights of recovery against third parties:

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- a) in the event of disappearance of the conveyance. Disappearance is understood to be when no news of the conveyance is received within six months.
- b) In case of unseaworthiness of the ship as a result of an insured event in accordance with art. 2, provided that the goods could not be reforwarded within six months.

The insurer may – even after payment of the replacement value – decline to accept any property rights of the goods.

The insurer is not obliged to accept damaged goods.

#### **Art. 24 Claims**

The claimant must justify his title to claim by means of the policy or insurance certificate. He must, moreover, prove that in the course of the insured voyage the goods sustained loss or damage covered by this insurance. To this end he shall submit the claim statement together with all necessary documents (invoices, waybills, survey reports, official reports, experts' reports, etc.).

### **G. Legal questions**

#### **Art. 25 Obligation of payment**

The right to collect is given four weeks after submission of all documents enabling the insurer to satisfy himself that the claim is genuine. In case of doubt as to the claimant's entitlement, the insurer may satisfy the terms of this insurance by placing the sum of the indemnity in a legally validated deposit.

In case of general average the insurer refunds the amount of the provisional contribution against surrender of the original receipt endorsed in blank.

#### **Art. 26 Change of ownership**

Should ownership of the insured property be transferred, all rights and privileges arising from the insurance agreement shall be transferred to the new owner.

In addition to the first owner, the second owner is also liable for payment of the premium due the insurer to the time of the transfer of ownership.

The new owner may cancel the agreement by giving written notice within 14 days of the transfer of ownership. The insurer is entitled to the same right of cancellation during the 14 days after receiving notification of the transfer of ownership. The cancellation will become effective upon delivery of the cancellation notice to the other contract party.

#### **Art. 27 Enforcement of rights of recovery**

Should third parties be freed of liability without the insurer's consent, all rights to compensation are voided. The assured cedes to the insurer all rights against third parties. Subrogation becomes effective as soon as the insurer has fulfilled his obligation to pay. The assured is obligated to sign a letter of subrogation on request of the insurer.

The insurer may request the assured to enforce the rights of recovery in his own name. The insurer assumes the costs thereof and is entitled to choose and to instruct the assured's lawyer. The assured may not accept any compensation offered by third parties without the insurer's consent.

#### **Art. 28 Forfeiture**

Legal claims against the insurer are forfeited unless suit is brought within two years of the event giving rise to the claim.

Claims in respect of general average contributions become void unless suit is brought within one year of the completion of the statement.

#### **Art. 29 Effect of measures taken by the insurer and the surveyor**

Measures ordered by the insurer or the surveyor for the purpose of surveying, mitigating or averting loss or damage or of preserving or enforcing any rights of recovery do not constitute admission of a duty to pay.

#### **Art. 30 Applicable law and jurisdiction**

This agreement is subject to Swiss law. The court of jurisdiction is the court at the (headquarters of the insurer) unless otherwise prescribed by law,

#### **Art. 31 Relationship to the Swiss Federal Law on Insurance Contracts**

The following sections of the Swiss Federal Law on Insurance Contracts of 2 April 1908 are not applicable: Sections 2, 3, 3a, 6, 14 paragraphs 2–4, 20, 21, 28–32, 38, 42, 46, 47, 49, 50, 54, 64 paragraphs 1–4, 72 paragraph 3.

The remaining provisions of the aforesaid law are applicable only insofar as they are not modified by the policy conditions.

#### **Art. 31 Insurer's address**

All communications to the insurer must be addressed to his head office in Switzerland or to the agency which issued the policy.