

MODEL CLAUSE ON ADVANCE LOSS OF PROFITS/DELAY IN START-UP (2023) TO NBBM 2013

SECTION 6 ADVANCE LOSS OF PROFITS

1. SPECIFICATION OF COVER

During the construction/erection and testing periods Advance loss of profits is covered under this Section for the benefit of the policyholder only, on the conditions set out below.

2. ADDITIONAL DEFINITIONS

For the purposes of the cover specified in this Section, the following definitions are applied:

2.1 TERRITORIAL LIMITS

Subject and contrary to the provisions of the other applicable policy conditions, the territorial limits under this Section are defined as the construction/erection site where the works are carried out and where the works are scheduled to be completed as well.

2.2 EXTRA COSTS

The extra costs the policyholder will actually incur in consultation with insurers (including the costs resulting from article 8.2 of this Section) in order to minimise or prevent the Expected delay, even if in retrospect these costs turn out not to have been useful or effective. All this on condition that the aggregate of these extra costs does not exceed the amount by which they are expected to reduce the Advance loss of profits borne by insurers.

If extra costs have been incurred to minimise both the Advance loss of profits and the Waiting period, these costs will be reimbursed by insurers on a pro rata basis.

2.3 FRANCHISE PERIOD

The period stated on the policy-schedule during which repair of an Insured occurrence can take place.

- If repair of an Insured occurrence can take place within the Franchise period, the delay of this Insured occurrence will not be taken into account when assessing the Delay.
- If repair of an Insured occurrence cannot take place within the Franchise period, the delay of this Insured occurrence will be taken into account when assessing the Delay.

2.4 INSURED OCCURRENCE

In the context of this Section an Insured occurrence is understood to mean a loss occurrence within the Territorial limits as defined in this Section, which is covered under Section 1 of this insurance during the construction/erection and/or testing period(s), even if such loss does not exceed the applicable deductible under Section 1 or is not compensated under Section 1 because it is (partly) recoverable under a warranty obligation.

2.5 SCHEDULED COMPLETION DATE

The date stated on the policy-schedule on which the insured contract works are scheduled to be completed or taken over.

2.6 ANNUAL INTEREST

The Annual interest is the Advance loss of profits over a period of one year.

2.7 ADVANCE LOSS OF PROFITS

Unless otherwise defined on the policy-schedule, this is understood to mean: the aggregate of recurring overhead charges and projected net profit during the period by which completion of the insured contract works exceeds the Scheduled Completion date and has a negative impact on the policyholder's planned business operations, as a result of one or more occurrence(s) insured under Section 1 of this policy.

2.8 INDEMNITY PERIOD

The maximum period as stated on the policy-schedule that commences upon expiry of the Waiting period, during which compensation of the Advance loss of profits may be payable.

2.9 EXPECTED DELAY

The time difference on the Scheduled Completion date caused by the Insured occurrence(s) and determined by the loss surveyor to be required in order to restore the works to a technical state comparable to their pre-loss state. The loss surveyor called in on behalf of insurers will assess this after each notification of claim.

2.10 DELAY

The final time difference as assessed afterwards by the loss surveyor called in on behalf of insurers, between the actual completion and the Scheduled Completion date, if and insofar as it was caused by one or more Insured occurrence(s).

2.11 WAITING PERIOD

The period stated on the policy-schedule, commencing on the Building-Scheduled Completion date, during which the Advance loss of profits remains for the account of the policyholder. This waiting period does not apply per Insured occurrence, but to all Insured occurrences collectively.

3. EXTENT OF COVER

3.1 COVER

This Section covers the Advance loss of profits incurred by the policyholder resulting from a Delay and/or the Extra costs resulting from or caused by one or more Insured occurrence(s).

3.2 SUM INSURED

Indemnity under this Section is limited to the sum insured stated on the policy-schedule, if applicable increased in accordance with the provisions of Article 5.3.

4. ASSESSMENT OF DELAY AND EXTRA COSTS

The loss surveyor assigned by insurers will in their initial contact with the policyholder also estimate and inform insurers in their interim and final reports about:

- 4.1 the (Expected) Delay;
- 4.2 the Extra costs that may be incurred or have actually incurred and are actually provable incurred by the policyholder.

5. COMPENSATION

The final compensation is calculated as follows.

- 5.1 The Advance loss of profits resulting from all Insured occurrences with a repair period exceeding the Franchise period, after deduction of any savings and/or payments received under other provisions. The Advance loss of profits thus assessed is compensated over the period of Delay, if and insofar as it exceeds the Waiting period yet limited to the Indemnity period.
- 5.2 The Extra costs assessed as per Article 4.2, are paid simultaneously with the compensation resulting from the Insured occurrence(s) or sooner at the policyholder's request, subject to insurers' prior consent.
- 5.3 If in the event of an Advance loss of profits, the sum insured turns out to be too low, an automatic excess cover will apply up to a maximum of the percentage of the sum insured stated on the policy-schedule.
- 5.4 If in the event of an Advance loss of profits, the actual Annual interest turns out to exceed the sum insured increased by the percentage referred to under Article 5.3, insurers are only liable to pay indemnity in the proportion of the actual Annual interest to the sum insured increased by the percentage referred to under Article 5.3.

6. EXCLUSIONS

No cover is provided under this Section for and/or excluded from this Section are the Advance loss of profits and/or Extra costs and/or effect of the Delay caused by or resulting from:

- 6.1 any failure to obtain or obtain in time permits and/or permission of the authorities to repair the loss as defined under Article 2.4;
- 6.2 the unavailability of (sufficient) financial resources or funds with and/or insolvency of the policyholder;
- 6.3 the inaccessibility of the construction/erection site;
- 6.4 penalties and similar amounts the policyholder can recover from contractors/suppliers due to non- or delayed completion of the insured contract works;
- 6.5 all costs and/or losses covered under the other Sections of this construction/erection insurance;
- 6.6 depreciation of interests destroyed by the Insured occurrence;
- 6.7 improvements in the original construction/erection method of the works.

7. EXTENSION

As to the cover provided under this Section, the insured construction/ erection/testing periods are not automatically extended.

Extension of the aforementioned period(s) must be agreed between the policyholder and insurers.

8. OBLIGATIONS OF THE INSURED

Under this Section the following obligations apply:

8.1 NOTIFICATION

The policyholder is obliged to notify insurers as soon as possible of any Insured occurrence that has or could have arisen, which may result in an Advance loss of profits as covered under this Section.

8.2 PROMPT REPAIR

The policyholder is furthermore obliged, immediately following a(n) (potential) Insured occurrence that (may) result(s) in Advance loss of profits, to make every effort to repair the loss of or physical damage to the works as soon as possible in consultation with insurers and to minimise the Advance loss of profits.

8.3 INFORMATION SUPPLY

The policyholder is obliged to allow insurers and/or the appointed claims assessor at their request access to all financial records, such as balance sheets, invoices, order books, and to provide all information that may reasonably be required to determine the Advance loss of profits and Extra costs.

8.4 CHANGE IN COMPLETION DATE

The policyholder is obliged to notify insurers of any change in the Scheduled Completion date as defined on the policy-schedule.

8.5 PROGRESS REPORT

The policyholder is obliged to inform insurers periodically about the progress of the works, at intervals as stated on the policy-schedule.

9. FORFEITURE OF RIGHTS

No rights can be derived from this Section if the policyholder failed to comply with one or more of the obligations mentioned under Article 8, insofar as the interests of insurers have been prejudiced thereby, unless the policyholder demonstrates that such non-compliance is the result of circumstances beyond their control and these circumstances are not attributable to them in any way.

10. EXCEPTIONAL SITUATIONS

The Indemnity period is limited to the Expected delay, yet never more than 13 weeks or the Indemnity period stated on the policy-schedule if this is shorter:

- 10.1 in case of bankruptcy or discontinuation of the policyholder;
- 10.2 if it is decided that definite repair of a specific loss or specific physical damage, which led to the Insured occurrence, will not be carried out.

EXPLANATORY NOTES

This Section is intended to provide cover to the policyholder if they are insured in the capacity of principal of the insured contract works.

The sum insured for this Section to be included on the policy-schedule, is an amount equal to the projected Annual interest during the agreed Indemnity period.

If this Section is included under the policy, it is worth considering having an independent expert assess the building-schedule of the insured contract works prior to the start of the construction/erection period, at the policyholder's expense, having this expert monitor the works and accurately set the Scheduled Completion date, so in the event of an Insured occurrence, the (expected) delay in the scheduled completion can quickly be assessed.

The periodical progress report as referred to in Article 8.5 may be a monthly or quarterly (planning) report to be provided by the policyholder, which must be laid down in the policy. If an independent expert monitors the works, this obligation may be cancelled in consultation with insurers.

For the avoidance of misunderstandings, we would like to point out that a delay due to loss or damage manifesting itself outside the Territorial limits is not insured (under standard cover). An example of this would be loss or damage manifesting itself during transport or pre-fabrication elsewhere.

As cover under this Section is only effective following an insured claim under Section 1, any limitations in the cover under Section 1 or the general conditions will also have an impact on the cover under this Section.

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The official Dutch title of this clause is: "Modelclausule Toekomstige Bedrijfsschade (2023) behorende bij NBBM 2013". The wording is available via the VNAB website, www.vnab.nl.

In the event of any discrepancy between the Dutch original wording, as published by the VNAB, and this free and non-binding English translation, the Dutch original will prevail.