

## DUTCH BOURSE POLICY FOR LAND-BASED EQUIPMENT 2006

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## ARTICLE 1 CONTINGENCY

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 insurers 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 therefrom or would arise therefrom under normal circumstances.

## ARTICLE 2 DEFINITIONS

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

### 2.1 POLICYHOLDER

the party with whom the insurance contract has been concluded and who is mentioned as such on the schedule;

### 2.2 INSURED

any party who may derive rights from this insurance contract by virtue of the policy;

### 2.3 W.A.M

Motor Insurance Liability Act [*Wet Aansprakelijkheidsverzekering Motorrijtuigen*];

### 2.4 INSURED OBJECT

the insured object described on the schedule complete with its equipment and accessories;

### 2.5 OCCURRENCE

an event or series of events arising from one single cause.

## ARTICLE 3 TERRITORIAL LIMITS

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

## ARTICLE 4 EXTENT OF COVER

### 4.1 DAMAGE TO THE INSURED OBJECT

#### 4.1.1 standard

The insurers compensate loss of or damage to the insured object or any part thereof:

- a. resulting from an external cause, as well as

- b. due to fire, explosion, collision, contact, bumping, skidding, overturning, landing in the water or going off the road as a result of the very nature or an inherent defect of the insured object.

#### **4.1.2 comprehensive**

The insurers compensate loss of or damage to the insured object or any part thereof as a result of:

- a. an external cause;
- b. the very nature or an inherent defect of the insured object

## **4.2 LIABILITY**

### **4.2.1 standard**

- 4.2.1.1 Even if one or more of the insurers has/have been admitted as authorised insurer in accordance with article 2 under 5 of the W.A.M., they do not cover the liability as referred to in article 4.2.1.2 in said capacity.

Concluding this insurance contract does therefore not constitute any compliance with or performance of any obligation to take out insurance under the aforementioned Act.

- 4.2.1.2 The insurers compensate the consequences of the liability of:

- a. the policyholder, the owner, the proprietor, the holder or the driver of the insured object;
- b. the parties being transported by the insured object;
- c. the employer of the persons referred to under a. and b., if such employer is liable in said capacity for damage to interests (including animals), as well as for the consequential loss, caused with or by:
  - a.a. the insured object;
  - b.b. interests situated on or in, or falling or fallen from the insured object;
  - c.c. trailers or other objects without their own propulsion which are coupled to the insured object or have been or become disconnected therefrom after coupling, as long as they have not come to a standstill outside traffic.

### **4.2.2 comprehensive**

- 4.2.2.1 If this insurance covers the liability as referred to in article 4.2.2.2., then the insurance is deemed to meet the requirements laid down in or pursuant to the W.A.M., without regard to any wording in this policy providing otherwise.

- 4.2.2.2 The insurers compensate the consequences of the liability of:

- a. the policyholder, the owner, the proprietor, the holder or the driver of the insured object;
- b. the parties being transported by the insured object;
- c. the employer of the persons referred to under a. and b., if such employer is liable in said capacity for bodily injury and damage to interests (including animals), as well as for the consequential loss, caused with or by:
  - a.a. the insured object;
  - b.b. interests situated on or in, or falling or fallen from the insured object;

- c.c. trailers or other objects without their own propulsion which are coupled to the insured object or have been or become disconnected therefrom after coupling, as long as they have not come to a standstill outside traffic.

#### **4.2.3 costs of litigation and legal interest**

If this insurance covers the liability as referred to in article 4.2.1 or 4.2.2, the insurers also compensate:

- a. the costs:
  - any insured party may be ordered to pay in respect of any legal action taken by them with the consent or at the request of the insurers, and the cost of legal assistance provided on the instruction of the insurers;
  - the insurers may be ordered to pay in respect of any legal proceedings instituted against them by the injured party;
- b. the legal interest on the claim amount covered under the policy payable by any insured party.

#### **4.2.4 security**

If on account of a loss or damage covered under this policy, a restriction of freedom has been imposed on any insured party or the insured object has been attached to guarantee the rights of any injured party, the insurers will provide security on behalf of the insured if the restriction of freedom or the attachment may thereby be lifted.

The insured is obliged to authorise the insurers in writing to withdraw the amount deposited by them as soon as it has been released and to lend his full assistance in order to obtain repayment.

### **4.3 Damage to other interests**

Contrary to the provisions of article 5.3.d., the insurers compensate the loss of or damage to interests (including animals) belonging to or in use by the policyholder, the owner or the bona fide holder, as well as the consequential loss, caused by the insured object or any interest situated thereon or therein, if and insofar as such loss or damage is not covered under any other policy.

## **ARTICLE 5 EXCLUSIONS**

### **5.1 GENERAL**

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

5.1.1.a nuclear reactions, regardless how the reaction has arisen. Nuclear reaction is understood to mean any nuclear reaction in which energy is released such as nuclear fusion, nuclear fission, artificial and natural radioactivity.

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.

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.

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.

Nuclear facility is understood to mean a nuclear facility within the meaning of said Act.

5.1.1.b a chemical, biological, biochemical or electromagnetic weapon.

5.1.2 Excluded from the insurance is loss or damage caused by:

- *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;
- *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;
- *insurrection*: organised violent resistance within a state directed against the public authorities;
- *civil commotion*: more or less organised violent acts occurring at various locations within a state;
- *riots*: a more or less organised local violent movement directed against the public authorities;
- *mutiny*: a more or less organised violent movement of members of any armed force directed against the authority under which they resort;
- or arising from or during seizure by any Dutch or foreign authorities.

5.1.3 arisen whilst the insured object was used for purposes other than those specified on the schedule.

## 5.2 DAMAGE TO THE INSURED OBJECT

Excluded from the cover described in article 4.1 is loss or damage:

- a. caused by a wilful act or recklessness of the policyholder/insured;
- b. that is a result of inadequate maintenance and/or insufficient care of the insured object attributable to the policyholder;
- c. to pneumatic tires, unless due to the same cause other damage to the insured object has arisen as well;
- d. consisting of the cost of repair of normal wear and tear.

## 5.3 LIABILITY

Excluded from the cover described in article 4.2 is the liability:

- a. of the person who drives or operates the insured object or who is thereon or therein without the explicit or implied authorisation of someone who has authorising power;
- b. of the mala fide proprietor or the mala fide holder;
- c. of any insured party for loss or damage which to him is the intended or inevitable consequence of his act or failure to act;

- d. for claims due to loss of or damage to interests (including animals) owned by the policyholder, the owner or the holder of the insured object, as well as the consequential loss, unless such loss or damage qualifies for compensation under the provisions of article 4.3;
- e. for claims due to loss of or damage to interests transported by the insured object (also during loading and unloading thereof) and loss of or damage to trailers or other objects which are coupled to the insured object or have been or become disconnected therefrom after coupling, as long as they have not come to a standstill outside traffic.
- f. regardless how it arose, for death of or bodily injury and/or property damage, as well as the consequential loss, incurred by the driver of the insured object.

#### 5.4 DAMAGE TO OTHER INTERESTS

Excluded from the cover described in article 4.3 is;

loss or damage caused by a wilful act or recklessness of the insured party incurring such loss or damage.

### ARTICLE 6 OBLIGATIONS OF THE POLICYHOLDER AND/OR THE INSURED PARTIES IN CASE OF LOSS OR DAMAGE

#### 6.1

- a. As soon as the policyholder or the insured is aware or should have been aware of an occurrence that may give rise to a liability to pay indemnity on the part of the insurers, they are obliged to notify the insurers as soon as is reasonably possible of such occurrence.
- b. The policyholder and the insured are obliged to provide 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.
- c. The policyholder and the insured are obliged to cooperate fully and to refrain from doing anything that may prejudice the interests of the insurers.
- d. The policyholder and the insured are obliged to take measures to prevent or minimise loss or damage as referred to in Section 7:957 of the Netherlands Civil Code.
- e. In the event of (attempted) theft or any other criminal offence, the policyholder or the insured is obliged to report it to the police and any other relevant party within 24 hours.
- f. In the event of loss or damage incurred by a third party, the policyholder or the insured is obliged to refrain from admitting any guilt or making any promise to any payment.

6.2 In case of non-compliance by the policyholder or the insured with any of the obligations as referred to in article 6.1, the insurers have the right to reduce the payment of compensation by the loss they incur as a result thereof.

6.3 All right to make a claim is forfeited if the policyholder or the insured failed to comply with any of the obligations referred to under a. through d. of this article with the intention to mislead the insurers, unless such misleading does not justify the forfeiture of rights.

## ARTICLE 7 CLAIM SETTLEMENT

- 7.1 Claims are either assessed by mutual agreement or by an expert to be appointed and paid by the insurers.
- The insured has the right to appoint an expert – at his own expense – as well. The two experts appoint a third expert who will in case of a difference in assessments render a binding award within the limits of their assessments.
- The insurers and the insured each bear half of the fee of such third expert.
- 7.2 In the event of damage to third-party interests (including animals), the insurers have the right to reach settlements with and indemnify injured parties directly. They will do so with due regard for the interests of the insured parties.
- Should the damages be awarded in periodic payments and the value thereof exceed the sum insured, taking into account any other payment, then either the duration or the amount of said payments will be proportionally reduced, at the insured's option.
- 7.3 In the event of the insurers being liable to indemnify any injured party under the W.A.M. or any similar foreign law in respect of a claim they could refuse towards an insured party under other statutory provisions or the policy conditions, they are entitled to recover the amount payable by them – increased by the related costs incurred by them – from said insured party.
- 7.4 Save in the event of a wilful act or recklessness of the party who caused the loss or damage, the insurers will not recover any amount of indemnity paid by virtue of articles 4.1 and 4.3 from:
- a. the policyholder, the owner, the bona fide proprietor or the bona fide holder;
  - b. the person who drives or operates the insured object or who is thereon or therein with the explicit or implied authorisation of someone who has authorising power;
  - c. the employer of the persons referred to under a. and b., if such employer is liable in said capacity for the loss or damage.

## ARTICLE 8 COMPENSATION

### 8.1 DAMAGE TO THE INSURED OBJECT

- 8.1.1 In the event of loss or damage as described in article 4.1, the insurers compensate:
- a. *in case of loss:*  
the pre-loss value of the insured object up to and not exceeding the amount stated on the schedule under:
    - 1.a. for loss or damage as described in article 4.1.1;
    - 1.b. for loss or damage as described in article 4.1.2;
  - b. *in case of damage:*  
the cost of repair, reduced by:
    - a. a reasonable deduction for normal wear and tear;
    - b. the value of any remainders.



The amount payable as indemnity will never exceed the amount that would have been paid in case of loss.

- 8.1.2 The insurers have the right to defer payment of the cost of repair as long as the damage has not been properly repaired.

The insurers must be given the opportunity to inspect the repair.

- 8.1.3 The insurers will not invoke underinsurance.

- 8.1.4 In addition to the loss or damage described in article 8.1.1, the insurers compensate the following costs:

- a. the costs of measures that 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 for which – once occurred – an insured party would be liable and which is covered under the policy, or to minimise such loss or damage. In this context costs of measures are deemed to include damage to interests that are employed as part of the measures herein referred to.
- b. the costs of the necessary protection or the transport of the insured object to the nearest appropriate repairer due to an insured loss or damage;
- c. the costs of debris removal due to an insured loss or damage, whether compulsory or deemed reasonably necessary by the policyholder following the loss of the insured object or any damage comparable thereto;
- d. general average contribution;  
and such in respect of each and every section up to and not exceeding the amount stated on the schedule under:
  - 1.a for loss or damage as described in article 4.1.1;
  - 1.b for loss or damage as described in article 4.1.2.
- e. the costs reasonably incurred to assess the loss or damage.

## 8.2 LIABILITY

### 8.2.1 standard

The insurers compensate the loss or damage as referred to in article 4.2.1 in respect of any one occurrence for all insured parties collectively up to and not exceeding the sum insured stated on the schedule under 2.a.

### 8.2.2 comprehensive

- a. The insurers compensate the loss or damage as referred to in article 4.2.2 in respect of any one occurrence for all insured parties collectively up to and not exceeding the sum insured stated on the schedule under 2.b.
- b. With respect to occurrences taking place in a country within the territorial limits where the locally applicable statutory provisions pertaining to compulsory insurance of motor vehicle liability require a higher limit of liability, such higher limit of liability will apply as sum insured.

### 8.2.3 costs of litigation and legal interest

The costs and interest referred to in article 4.2.3 are paid in excess of the sum insured stated on the schedule under 2.a. or 2.b.

#### **8.2.4 security**

The insurers provide the security referred to in article 4.2.4 up to and not exceeding the pre-loss value of the object.

### **8.3 DAMAGE TO OTHER INTERESTS**

The insurers compensate the loss or damage described in article 4.3 up to and not exceeding the amount stated on the schedule under 3.

### **8.4 AUTOMATIC REINSTATEMENT FOLLOWING LOSS OR DAMAGE**

Irrespective of the amount that has been or will be paid by the insurers, the insurance for the insured object remains effective for the full sums insured during the entire period of insurance.

## **ARTICLE 9 LIMITATION OF LEGAL CLAIM**

- 9.1. Any legal claim against the insurers to pay indemnity becomes 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 claimability thereof. Nevertheless, in case of insurance against liability, the legal claim does not become prescribed until six months have elapsed after the claim against which the insurance provides cover was submitted within the limitation period or expiry period applicable thereto.
- 9.2. The limitation period is interrupted by a written notification whereby payment of indemnity is claimed. A new limitation period becomes 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 article 9.3.
- 9.3. In the event of a refusal, the legal claim becomes prescribed by the lapse of twelve months

## **ARTICLE 10 PAYMENT OF PREMIUM AND CLAIMS**

### **10.1 DEFINITIONS**

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

### **10.2. PREMIUM**

- 10.2.1 The 'broker' undertakes to pay the premium to the insurers 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 insurers for the premium payable by the insured under the insurance contract, at which point the insured will be discharged towards the insurers.

- 10.2.2 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.
- 10.2.3 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.
- 10.2.4 Upon conclusion of this contract the broker has been irrevocably authorised by the insured to release the insurers 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 insurers from their obligations without prior written notice of such intention to the insured.

### 10.3 PAYMENT OF CLAIMS AND RETURN OF PREMIUM

- 10.3.1 Unless the party entitled prefers a different manner and has given prior written notice thereof to the insurers, the broker will debit the current account of insurers for any payable amount of indemnity and return of premium.

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

- 10.3.2 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 11 REFUND OF PREMIUM

The policyholder is only entitled to a refund of premium if the insurance terminates other than at the expiry date pursuant to the provisions of articles 13.1, save in the event of a wilful act to mislead, or 13.2.a. In such case the premium will be refunded over the period for which premium has been paid but during which the insurers do not run any risk, on return of a certificate of insurance as referred to in article 14 of the W.A.M. issued to the policyholder, if any.

## ARTICLE 12 CHANGES TO THE INSURED OBJECT

The insurance remains in full force and effect in the event of changes being made to the insured object.

The policyholder and/or the insured are obliged to notify the insurers forthwith of any change in the aforementioned details, following which the premium and/or conditions may be revised with immediate effect.

The right to make a claim is forfeited if the policyholder or the insured failed to comply with said obligation and the insurers would not have continued the insurance, at least not on the same conditions and/or at the same premium, had they had knowledge of the change in risk, unless there is no causal connection between the loss or damage and the change in risk.

In the event that the policyholder and the insurers fail to reach an agreement on such revision, both the policyholder and the insurers have the right to cancel the insurance prematurely subject to 2 months' notice at a pro rata return of premium, with the proviso that in any case the additional premium until the date of cancellation, to be calculated in fairness, will be payable.

## ARTICLE 13 TERMINATION OF THE INSURANCE

13.1 The insurers and the policyholder have the right to cancel the insurance as at the premium due date subject to two months' notice.

If the policyholder has committed any act towards the insurers with the intention to mislead them, the insurers have the right to cancel the insurance with immediate effect without any return of premium being payable.

13.2 The insurance furthermore terminates:

- a. as soon as the insured object is sold or put out of operation permanently;
- b. in case of loss of the insured object or any damage comparable thereto in accordance with article 8.1.1.a.

## ARTICLE 14 APPLICABLE LAW AND DISPUTES

14.1 This insurance contract is governed by the laws of the Netherlands.

- 14.2. 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.

## ARTICLE 15 FINAL PROVISIONS

- 15.1 If this insurance covers more than one object and the sum insured is subdivided among such objects, each object is deemed to be insured under a separate policy.
- 15.2 Notices and communications from the insurers directed to the policyholder at his address last-known to the insurers or at the address of the intermediary through whom this insurance contract has been placed, are deemed to have been duly made.
- 15.3 The headings can neither alter nor affect the contents of the articles.

*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.*

*For previously published (older) conditions, please contact the VNAB.*

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

*The wording of the Conditions 'Dutch Bourse Policy for Land-based Equipment 2006' is available via the website of the Netherlands Insurance Exchange Association., [www.vnab.nl](http://www.vnab.nl).*