

## DUTCH BOURSE CARGO POLICY 2014

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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 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 insured had arisen therefrom or would arise therefrom under normal circumstances.

## ARTICLE 2 EXTENT OF COVER

- 2.1. Within the context of this policy the term interests is understood to mean interests in which the policyholder and/or the insured trade, unless otherwise provided.
- 2.2. The sum insured stated in the policy also applies as the value determined by the parties.
- 2.3. Any profit or increase in value, regardless whether this has been included in the estimate under the policy or not, is compensated in the event of loss of or damage to the interests without evidence of such profit or increase in value being required.
- 2.4. Except as provided for in article 3, the sum insured applies as the limit of indemnity the insurer(s) 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 insurer(s) compensate all loss or damage, regardless whether the total amount thereof exceeds the sum insured.

## ARTICLE 3 PAYMENTS IN EXCESS OF THE SUM INSURED

- 3.1. If and insofar as the policyholder and/or the insured are entitled to full or partial compensation for general average contribution in addition to their entitlement to compensation for loss of or damage to any interest, such amount will be for the account of the insurer(s).
- 3.2. Insurer(s) reimburse the costs of measures that are taken by or on behalf of the policyholder and/or any insured party and are reasonably required in order to avert the imminent risk of loss or damage which - once occurred - is covered under the policy, or in order 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.
- 3.3. In the event of unloading out of necessity or in a port of distress on account of an insured peril, the expenses of unloading, storage and reloading, as well as any additional forwarding charges are also for the account of the insurer(s), even if the sum insured is thereby exceeded.

## ARTICLE 4 INSURED VOYAGE

- 4.1. The risk borne by the insurer(s) commences as soon as the interests lying in the warehouse or storage depot in the place of forwarding stated in the policy ready to commence the insured voyage, are being raised or removed in a similar way in order to commence the insured voyage. The risk continues without any interruption throughout the normal course of the voyage and expires upon arrival of the interests at the destination mentioned in the policy, at the location in the warehouse or storage depot designated as such by the consignee, provided that the policyholder and/or the insured have arranged for the interests to be transported in the customary way or as agreed with the insurer(s).
- 4.2. The provisions of 4.1. remain applicable, also in case of interruption in transport, change of course, voyage or means of transport or extension of the voyage due to circumstances beyond the control of the policyholder and/or the insured with the proviso that, if this leads to an extension of the voyage or duration thereof or an increase of the risk borne by the insurer(s), the insurer(s) are entitled to an appropriate additional premium, unless said circumstances are caused by an insured peril. All this subject to the provisions of 4.4.
- 4.3. Should, after the risk on the part of the insurer(s) has commenced, the policyholder and/or the insured terminate the voyage of the interests before the interests have arrived at the destination stated in the policy or should the policyholder and/or the insured arrange for the interests to be shipped to another place before they have arrived at the place where the risk would expire according to 4.1., the risk on the part of the insurer(s) will, unless otherwise agreed, either expire after 15 days following the arrival of the interests at such place where the voyage is terminated or changed or so much sooner as:
  - a. the interests have been sold and delivered to the buyer(s) at such place or
  - b. the transport of the interests to such other destination commences or
  - c. the interests are stored or handled for distribution or otherwise by order of or on behalf of the policyholder and/or the insured.

Should the unloading or delivery have been delayed as a result of a legal impediment, to be demonstrated by the policyholder and/or the insured, then the aforementioned maximum period of 15 days will be suspended for the duration of such impediment, however, subject the provisions of 4.4.
- 4.4. In the event of carriage in whole or in part by ocean-going vessel, the risk on the part of the insurer(s) expires, if and insofar it has not already expired pursuant to any other provision of this policy, in any case after 60 days following the unloading of the interests from the ocean-going vessel in the final port of discharge.

## ARTICLE 5 RETURN SHIPMENTS

If the insured interests are returned, the insurer(s) continue to bear their risk without any interruption on the same conditions whilst on location and during the return shipment at a premium to be agreed, provided that they have been notified thereof and have accepted such extension of risk.

## ARTICLE 6 TRANSPORT AND STORAGE

- 6.1. If the policyholder and/or the insured arrange transport and storage on conditions which are in accordance with commercial practice for such transport and storage, the insurer(s) will neither derive any claim nor any defence against the policyholder and/or the insured from the acceptance of such conditions based on Title 17 of Book 7 of the Netherlands Civil Code.
- 6.2. Carriers or persons who have been entrusted with the transport, handling or custody of the interests cannot derive any benefit from the existence of this insurance, insofar as they have not been specifically named in the policy as policyholder and/or insured.

## ARTICLE 7 METHOD OF LOADING

This insurance is effective regardless how and where the interests have been loaded or stowed into or onto the means of transport. If the interests on board an ocean-going vessel have been loaded on deck, the insurance does not apply in respect of any seawater damage and any loss or damage due to the interest being jettisoned or washed overboard, unless such loading on deck is customary or the insured makes a reasonable case for the interest having been loaded on deck without his consent. Consent to load on deck will not be assumed solely on the ground that transport has been arranged on the condition that the carrier is allowed to stow on and/or below deck or any similar condition.

## ARTICLE 8 SEAWORTHINESS OR RELIABILITY OF THE MEANS OF TRANSPORT

The insurer(s) will not invoke unseaworthiness or defectiveness of the means of transport, unless the insured was aware of the unseaworthiness or defectiveness. If such is the case, loss or damage caused by unseaworthiness or defectiveness is not compensated.

## ARTICLE 9 GENERAL AVERAGE

- 9.1. The insurer(s) pay the general average contribution as referred to in Sections 8:610 and 8:1020 of the Netherlands Civil Code, which may be charged on the insured interests pursuant to the Netherlands or any foreign law or stipulations of the contract of carriage, all this with without regard to article 16.
- 9.2. If the sum insured is lower than the contributory value assessed in the average adjustment or the value stated in the deposit receipt, the insurer(s) are only liable to pay the general average contribution on a pro rata basis. When calculating said contribution, any damage to interests, which has been taken into account in the assessment of such value and which the insurer(s) are liable to pay, is deducted from the sum insured.
- 9.3. If and insofar as a general average allocation does not take place because ship, cargo and freight or any of said interests are in one hand, the procedure to be adopted will be as if a general average allocation between the interests held in one hand had been determined in accordance with the York-Antwerp Rules as referred to in Section 8:613 of the Netherlands Civil Code, the General Average Rules International Association the Rhine vessels' register [*Averij-grosseregels IVR*] as referred to in Section 8:1022 of the Netherlands Civil Code or the applicable law at the location where the voyage is completed.
- 9.4. a. If the policyholder and/or the insured are obliged to deposit an amount as security for the

payment of the general average contribution or expenses exclusively charged on the cargo, the insurer(s) are bound, if the general average contribution or the aforementioned expenses are for their account, to reimburse the insured on submission of the deposit slip for the amount stated thereon, subject to the provisions under d.

- b. The rights arising from the deposit must be assigned to the insurer(s).
- c. Payment of the amount referred to under a. to the policyholder and/or the insured by the insurer(s) does not discharge the last mentioned from their obligation to reimburse that which the policyholder and/or the insured were to contribute to the general average if the deposit referred to under a. towards covering the contributions in question were to be insufficient or lost through no or partial fault of the insured.
- d. When calculating the amount to be reimbursed by the insurer(s) under a., the provisions of 9.2. will be applied, with the proviso that the contributory value of the interests therein referred to is replaced by the value advised by the insured to the average adjuster.
- e. Should the contributory value of the interests be found to differ from the value advised after the average adjustment became binding, then the amount payable by the insurer(s) on account of general average will be assessed in accordance with 9.2., with due observance of the contributory value.

## ARTICLE 10 LAY DAYS AND OVERWINTERING

On no account will the insurer(s) reimburse expenses of lay days and overwintering, even if they could be claimed as general average contribution within the meaning of article 9. of the policy, unless said expenses can also be considered general average according to the York-Antwerp Rules as referred to in Section 8:613 of the Netherlands Civil Code or General Average Rules IVR as referred to in Section 8:1022 of the Netherlands Civil Code.

## ARTICLE 11 CLAIMS ASSESSMENT

- 11.1. Claims are either assessed by mutual agreement or by an expert to be appointed and paid by insurer(s).

The insured has the right to appoint an expert - at their own expense - as well. Both 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 insurer(s) and the insured each bear half of the fee of said third expert.

- 11.2. In the event of the insured interests arriving partially damaged, a surveyor will assess the gross value of the interest (value including freight and expenses) had they arrived intact at the port of discharge or their destination, which will be deemed to be the sound market value, as well as the gross value in their present condition. The insurer(s) will compensate the part of the sum insured that is in proportion to the difference between the aforementioned values, unless otherwise provided for in the schedule.

- 11.3. The fees and expenses of the average agent must be paid by the insured, but are reimbursed to the insured by the insurer(s) if the loss or damage itself is covered under this insurance.

## ARTICLE 12 LACK OF TIDINGS

If after a reasonable period no communications have been received regarding the means of transport carrying the interests, said interests are assumed to have been lost, provided that the policyholder and/or the insured submit a written statement from the carrier proving such lack of tidings.

## ARTICLE 13 INTERESTS OF VARIOUS TYPES AND VALUES

In case of interests of various types and values, the sum insured in respect of the various interests will, for the purpose of assessing the loss or damage, be calculated by dividing the aggregate sum insured in proportion to the invoice value of such interests. In the absence of an invoice value, the sound market value at the destination will be used instead.

## ARTICLE 14 PACKING

- 14.1. In the event of a decrease in value of the interests solely resulting from loss of or damage to the packing - including the material used for indicating brand or trademark and type - the cost of repairing such packing will be for the account of the insurer(s), insofar as compensation for damage to the interests is not excluded from the insurance.
- 14.2. Should such repair not be possible or the cost thereof exceed the decrease in value referred to hereinbefore, the insurer(s) will compensate the remaining decrease in value.

## ARTICLE 15 TRADE AND ECONOMIC SANCTIONS

- 15.1. Insurer(s) are not bound to provide cover or indemnity under this insurance if this would constitute an infringement on sanction legislation or rules that prohibit insurer(s) from providing cover or indemnity under this insurance.
- 15.2. Excluded is loss of and/or damage to interests whose trade is not permitted under national or international rules.
- 15.3. Excluded are the (financial) interests of persons, companies, authorities and other entities in respect whereof insurer(s) are not permitted to insure said interests under national or international rules.

## ARTICLE 16 NATURE AND DEFECT

- 16.1. Unless expressly otherwise agreed, loss or damage arising from the nature of or any defect in the insured interest does not qualify for compensation under the insurance.

- 16.2. In the event of loss or damage due to delay, the insurer(s) are only liable to pay indemnity if the delay has been caused by an occurrence against which said interests are insured and the means of transport carrying said interests has been damaged as a result thereof.

## ARTICLE 17 EVIDENT NEGLIGENCE OF AN INSURED PARTY

Contrary to Section 7:952 of the Netherlands Civil Code, the insurer(s) do not compensate any loss or damage caused by evident negligence of any insured party. Evident negligence is understood to mean any conduct that, even if an insured is not aware of it, involves such a substantial risk of loss or damage by objective criteria that the insured should have been aware of said risk and by not refraining from such conduct, seriously fails to comply with the duty to prevent loss or damage.

## ARTICLE 18 PAYMENT OF PREMIUM AND CLAIMS

### 18.1 DEFINITIONS

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

### 18.2 PREMIUM

- 18.2.1. 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).
- 18.2.2. 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.
- 18.2.3. 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.
- 18.2.4. 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.

- 18.2.5. In case of the insured being bankrupt or being granted a moratorium, the credit referred to under 18.2.3. is cancelled immediately and the insurer(s) are released from their obligations under the insurance contract as referred to hereinbefore under 18.2.4. 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.

### 18.3. PAYMENT OF CLAIMS AND RETURN OF PREMIUM

- 18.3.1. 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.
- 18.3.2. 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 19 OBLIGATIONS IN CASE OF LOSS OR DAMAGE

- 19.1. As soon as the policyholder and/or the insured are aware or should have been 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.



- 19.2. The policyholder and/or the insured are obliged to provide the insurer(s) within a reasonable period with all information and documents which are of relevance to insurer(s) in order to assess their liability to pay indemnity.
- 19.3. The policyholder and/or the insured are obliged to cooperate fully and to refrain from doing anything that may prejudice the interests of the insurer(s).
- 19.4. The policyholder and/or 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.
- 19.5. In case of non-compliance by the policyholder and/or the insured with any of the obligations as referred to in 19.1. through 19.4. of this article, the insurer(s) have the right to reduce the payment of compensation by the loss they incur as a result thereof.
- 19.6. All right to make a claim is forfeited if the policyholder and/or the insured failed to comply with any of the obligations referred to in 19.1. through 19.4. of this article with the intention to mislead the insurer(s), unless such misleading does not justify the forfeiture of rights.

## ARTICLE 20 LIMITATION OF LEGAL CLAIM

- 20.1. 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.
- 20.2. 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.
- 20.3. In case of insurance against liability, the limitation period is, contrary to the provisions of 20.2., 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 21 RECOURSE AGAINST THIRD PARTIES

- 21.1. Should they deem such desirable for reasons of recourse against any third party, the insurer(s) are at all times authorised to suspend payment until such recourse has been settled, with the proviso that, should the insured so desire, the insurer(s) will grant the insured an interest-free loan up to the amount which would have been payable on settlement of the claim; if the insurer(s) demand repayment of said loan, the insured has the right to set off his claim under the insurance against said loan. If the insured has received an interest-free loan as referred to hereinbefore, the insured's claim against the insurer(s) no longer qualifies for any cession, substitution or any assignment or transfer whatsoever.
- 21.2. The insurer(s) have the right:

- a. either to take all measures necessary to seek recourse against any third party on behalf of the insured;
- b. or to demand that all rights of the insured towards any third party be assigned to the insurer(s) or to an agent to be appointed by them, in order that they can exercise their right of recourse against any third party in their own name or in the name of such agent.

In either case all expenses incurred in connection with the recourse against third parties are for the account of the insurer(s).

- 21.3. Even before the insurer(s) have paid, the insured is obliged to provide all documents and information required or useful for the recourse against third parties and the preliminary arrangements for such action.

## ARTICLE 22 BOTH-TO-BLAME COLLISION CLAUSE

If the bill of lading includes the both-to-blame collision clause, the insurer(s) will be liable for the financial consequences of any claim that may be brought against the insured pursuant to said collision clause. In the event of a claim made against the insured by the shipowner and/or the charterer under said clause, the insured is obliged to notify the insurer(s) thereof forthwith, while the latter will be authorised to contest such claim at their expense, if necessary in court. The policyholder and/or the insured commit themselves to cooperate fully.

## ARTICLE 23 INTEREST

The insurer(s) only pay interest accruing from three months after submission of the claim statement with the related documents, provided that a writ of summons to that effect has been issued against insurer(s) within three months afterwards. If the writ of summons is issued later than six months after submission of the claim statement, no interest is payable prior to the date of the writ of summons.

## ARTICLE 24 FREE OF WAR RISK AND STRIKE RISK

Unless expressly otherwise agreed in this policy, the insurance is deemed to have been effected on the condition 'free of war risk and free of strike risk'.

War risk is understood to mean:

- war and warlike operations, civil war, revolution and insurrection;
- the effect of torpedoes, mines, bombs and similar armaments left behind from any of these situations, even if the loss or damage arose in peacetime;
- seizure and arrest by order of the authorities.

Strike risk is understood to mean:

- acts of violence committed in connection with strike, lockout of employees and industrial disturbances;
- acts of violence committed for political reasons;
- riots, commotion and local disturbances.

All this insofar as it does not fall within the scope of war risk.

In the event that the interests, the means of transport carrying them or both have been exposed to the war risk or strike risk, the insurance does not terminate, nor is the liability of the insurer(s) limited, regardless whether the insurance under consideration provides cover against any form of war risk or strike risk or not. Neither does the insurance terminate or the liability of the insurer(s) cease or be limited by the performance of any act or a failure to act by or on behalf of the policyholder and/or the insured or any third party, if such act or failure to act takes place as a result of the war risk or strike risk referred to, or for fear thereof. In any case the liability of the insurer(s) ceases upon confiscation, pre-emption, requisition of property, expropriation or similar acts performed by or by order of any Dutch or foreign military or civil authorities or by or by order of any public body of said Dutch or foreign authorities.

#### ARTICLE 25 TRANSFER OF OWNERSHIP OR INTEREST BY AN ACT OF WAR OR STRIKE RISK

No right can be derived from this insurance contract by any party who has obtained ownership of the interest or any interest therein by an act of war risk or strike risk.

#### ARTICLE 26 APPLICABLE LAW AND DISPUTES

- 26.1. This insurance contract is governed by the laws of the Netherlands.
- 26.2. 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.*

*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 official title of these conditions is 'Dutch Bourse Cargo Policy 2014'. The wording is available via de website of the Coöperatieve Vereniging Nederlandse Assurantie Beurs B.A., [www.vnab.nl](http://www.vnab.nl)*