

Conditions for Insurance of Builders' Risks

This insurance shall not be subject to the Insurance Contracts Act of 16 June 1989 No. 69, with the exception of Section 7-8 of the Act. The insurance contract shall be subject to the agreed insurance conditions, the Norwegian Marine Insurance Plan of 1964 (the Plan), and the Insurance Contracts Act of 1930, Chapters 1-9, with the insurance practice which has been developed in connection with these provisions.

A. General provisions

1. Scope of the insurance

Subject to the exclusions stated in Clause 2, this insurance covers all risks of loss of or damage to the subject matter insured (the subject matter) during the period of insurance.

When a peril covered by this insurance has struck, the following is covered:

- a) Builders' liability for loss or damage caused to a third party provided the liability arose in direct connection with the building of the subject matter,
- c) damage to Builders' Yard or Property after completed launching pursuant to Clause 24,
- d) salvage charges,
- e) loss of or damage to the subject matter caused by measures taken by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution damage, unless the risk of such damage is caused by perils stated in Clause 2, subsections a) and b).

2. Exclusions

This insurance does not cover loss or damage caused by:

- a) War or war-like conditions, or the use of arms or other instruments of war in the course of military manoeuvres in time of peace or during armed neutrality.
- b) Capture at sea, condemnation in prize, confiscation, requisition for title or use and other similar measures taken by an alien governmental authority. By alien governmental authority is understood any governmental authority other than the Builders' state of domicile or states allied thereto, and persons or organizations who unlawfully pretend to be exercising public or intergovernmental authority.
- c) Measures taken by the Builders' state of domicile or allied governmental authority. By governmental authority is understood persons or organizations who exercise public or intergovernmental authority.
- d) Nuclear perils.

This insurance does not cover loss directly or indirectly caused by or arising from the release of any kind of atomic/nuclear energy from any kind of source (nuclear peril). If a nuclear peril has contributed to a loss, the whole loss shall be deemed to be caused by such peril. The Assured has the burden of proving that the loss was not caused by a nuclear peril.

- e) Insolvency.

3. Claimants under the insurance

Claimants under this insurance are:

- a) the Builders, insofar as the Builders bear the risk of loss of or damage to the subject matter and its parts etc. at the time a peril covered by this insurance strikes,
- b) the Owners, in respect of objects meant for the subject matter which they deliver to the Builders but bear the risk of loss of or damage to, provided that the value of such objects has been included in the sum insured,
- c) in a case of total loss, the Owners, provided they have become the owners of the subject matter as it has been constructed, on the basis of instalments paid on the building contract price.

Owners' rights to claim under this insurance shall not exceed those of Builders.

4. Duration of the insurance

This insurance attaches from the date agreed upon stated in the Policy. This insurance terminates when the subject matter is taken over by Owners, or when the subject matter is ready for delivery.

5. Causation

The Insurer is liable for loss or damage caused by a peril covered by this insurance striking the subject matter during the period of insurance.

If the subject matter on the expiry of this insurance has a defect or damage which at such time is unknown, the Insurer is not liable for loss or damage which originate thereafter due to the defect or damage.

The Insurer is not liable for loss or damage which is deemed to have originated during the construction period and which is discovered later than four months after the expiry of this insurance.

6. Geographical limits of the insurance

This insurance applies at Builders' Yard and Builders' premises elsewhere within the port or place of construction at which the Builders' Yard is situated and while in transit between such locations. This insurance does not cover parts etc. which are constructed or manufactured at other sites unless the Insurer has agreed hereto.

This insurance also applies during the necessary number of trials within a distance by water of 250 nautical miles from the port or place where the construction was completed.

Parts etc. which are purchased or delivered to the subject matter by the Owners are covered by this insurance while at Builders' Yard and Builders' premises elsewhere or premises employed for storage etc. by Builders within the port or place of construction at which the Builders' Yard is situated, cfr. Clause 13, first paragraph, subsection d). Deliveries of parts etc. by the Owners directly to the subject matter while the latter is outside Builders' Yard and Builders' premises elsewhere within the port or place of construction at which the Builders' Yard is situated are covered from the moment such deliveries are taken on board the subject matter.

7. Movement of the subject matter or parts thereof

This insurance covers movement of the subject matter or parts thereof under own power or in tow outside Builders' Yard and Builders' premises elsewhere, but within the port or place of construction at which the Builders' Yard is situated, subject to prior approval by the Insurer of the movement or tow and at an additional premium to be agreed upon.

8. Additional coverage

Provided prior notice has been given to the Insurer and subject to an additional premium to be arranged for each particular coverage, this insurance may be continued in the event of

- a) the contract for the building of the subject matter being assigned,
- b) the subject matter exceeding the geographical limits of this insurance as defined in the second paragraph of Clause 6.

If the subject matter is not taken over by the Owners or if there are no owners, this insurance may be continued for a period not beyond 30 days from the day the subject matter was ready for delivery, subject to special agreement with the Insurer. The Insurer must approve the lay-up site and the conditions under which the subject matter is laid up.

9. Sum insured

The sum insured is the amount stated in the Policy.

10. Interest

- a) To § 86, first paragraph, of the Plan:
The Assured may claim interest on the amount of compensation as from the expiry of one month from the day the written notification of the casualty was received by the Insurer. Where the Insurer has to refund the Assured's disbursements, the duty to pay interest shall at the earliest occur as from one month after the day these disbursements were made.
- b) To § 86, third paragraph, and § 90, third paragraph, first sentence of the Plan:
The rate of interest shall be 8%.
- c) To § 112, third paragraph, of the Plan:
The rate of interest shall be determined in accordance with the provision contained in section 3, first paragraph, of the Interest Act of 17 December 1976.

11. Limitation of claims

The Insurer's liability for any one casualty is limited as follows:

- a) loss of or damage to the subject matter and parts etc. thereof shall be recoverable up to the sum insured.
- b) liability to third parties, including damage to Builders' Yard or Property (Clauses 23 and 24) and wreck removal charges (Clause 25) shall be recoverable up to an amount equalling the sum insured,
- c) salvage charges incurred in averting or minimizing damage or total loss or liability to third parties, and expenses incurred in completing an unsuccessful launching shall be recoverable up to an amount equalling the sum insured.

Legal costs and any general average contributions are included in the abovementioned limits. Interest on claims recoverable is due in addition to the abovementioned limits.

12. Deductible

One per mille of the sum insured, but not less than NOK 75 000, shall be deducted for each casualty, total loss excluded.

B. Loss of or damage to the subject matter

13. Subject of insurance

This insurance comprises:

- a) whatever is constructed of the subject matter at any given time.
- b) parts and materials manufactured or acquired for the subject matter,
- c) Builders' expenses for drawings and planning of the subject matter,
- d) parts of and materials for the subject matter supplied by the Owners, provided that the value of such parts and materials are included in the sum insured,
- e) bunkers, grease, deck and engine stores on board the subject matter belonging to the Builders.

If objects or parts which have not yet been incorporated in the subject matter are lost or damaged, the Assured has the burden of proving that such objects or parts were numbered with the subject matter's serial number.

14. Total loss

Total loss may be recovered for when the Builders' obligation to deliver is terminated because of damage to or loss of the subject matter or damage to the Builders' Yard or the works of a sub-contractor provided the Insurer has agreed to extend

this insurance to cover parts etc. which are constructed or manufactured at this sub-contractor's works.

The compensation for total loss shall be calculated on the basis of the value of whatever was constructed of the subject matter at the time the damage occurred with the addition of the value of parts etc. procured by the Builders or supplied by the Owners, subject, however, to Clause 13, first paragraph, subsection d). If the sum insured is lower than the sum stated in the contract for the building of the subject matter, the abovementioned addition included, the Insurer will only compensate the part of the loss which corresponds to the proportion between the subject matter's sum insured and the sum stated in the contract for the building of the subject matter, abovementioned additions included.

The sum insured is payable when the subject matter is ready for delivery.

15. Damage

If the subject matter or parts etc. thereof suffer damage which is not recoverable under Clause 14, the Insurer will cover the costs of repairing the damage, including the costs of moving the subject matter and the costs of replacing lost parts. Costs or expenses incurred exclusively to remedy faulty design on construction or incorrect choice of materials are not recoverable.

The liability to pay such claims arises as and when the costs of repairs are incurred.

If the Assured derives special benefits from repairs in that the subject matter is improved, a deduction from the claim shall be made, limited to the increased costs caused by the improvement.

If complete repair of the damage is not possible, but the subject matter can be made serviceable for its intended purpose through less extensive repairs, the Insurer will cover the depreciation in value in addition to the repair costs. If complete repairs of the damage will result in unreasonable costs, the Insurer may limit his liability to the cost of other less extensive repairs in addition to the depreciation in value. If Builders and Owners agree to continue the construction of the subject matter despite the fact that the Builders' obligation to deliver is terminated, the Insurer's liability shall be limited to the sum which the Assured could have claimed as compensation for total loss.

16. Claims for unrepaired damage

If repairs have not been effected within the insurance period, the Insurer may limit his liability to the estimated cost of repairs at the time this insurance terminates.

The same applies to damage discovered during the period stated in Clause 5, third paragraph, and which has not been repaired at the termination of this period.

17. Losses not recoverable

This insurance does not cover any liability, cost or expense arising in respect of:

- a) provisions and wages for the crew and similar expenses directly connected with the running of the subject matter during the period of repair,
- b) carrying, storing, or removing cargo,
- c) accommodation of passengers.

18. Temporary repairs

The Insurer will cover the cost of necessary temporary repairs when permanent repairs cannot be effected at the location where the subject matter is lying. If temporary repairs are effected in other cases, the Insurer will cover the costs up to the amount saved through postponing the permanent repairs.

19. Survey of damage

All damage shall be surveyed by a representative of the Assured and a representative of the Insurer before the damage is repaired.

The representative shall issue survey reports, in which they describe the damage and state their opinions regarding the

probable cause of each separate item of damage, the time of its occurrence, and the cost of repairing it.

When one of the parties so requires, the representatives shall, before repairs of the damage commence, issue preliminary reports giving an approximate estimate of the repair costs.

In the event of a dispute between the two representatives, they shall appoint an arbitrator who shall give a reasoned opinion on the issues submitted to him. If the parties cannot agree on the choice of an arbitrator, the latter shall be appointed in Norway by a notary public or abroad by the competent Norwegian consul.

Neither the Assured or the Insurer may demand legal survey of the damage unless this is required by the legislation of the country in question.

If the Assured commissions repairs on the Subject matter without compelling reasons before arranging a survey or notifying the Insurer of the survey, the Assured has, in addition to his burden of proof pursuant to § 19 of the Plan, the burden of proving that the damage is not due to causes which are not covered by the insurance.

20. Invitation to tender

The Insurer may demand tenders for the repairs to be taken from yards of his own choice. If the Assured does not invite such tenders, the Insurer may do so. The tenders received shall for the purpose of comparison be adjusted by adding the costs of removal to the sums stated in the tenders.

The Assured has the choice of repair yard, but the Insurer's liability for the repair costs shall be limited to an amount corresponding to the amount that would have been recoverable had the lowest adjusted tender been accepted.

If the Assured, due to particular circumstances, has justifiable reasons for objecting to the repairs being done at one of the yards that have tendered, he may demand that this yard's tender be disregarded.

21. Additional expenses incurred by moving the subject matter

Subject to the limitations stated in Clause 20, the Insurer will cover additional expenses incurred by moving the subject matter to the repair yard, including provisions and wages for the crew, bunkers and similar expenses directly connected with the running of the subject matter during the period of repair. If moving the subject matter results in a saving to the Assured, a corresponding amount shall be deducted.

22. Apportionment of expenses

Where expenses have been incurred which are common to the repair work for which the Insurer is liable and work which is not covered by the insurance, these expenses are to be apportioned on an estimate basis, with due regard to the cost of the two categories of work. The common expenses that depend upon the length of the repair period shall be apportioned on the basis of the time that the recoverable and non-recoverable work would have required, if the two categories of work had been carried out separately.

C. Builders' liability in connection with the construction

23. Third party liability

The Insurer will cover Builders' liability according to law arising in direct connection with the construction of the subject matter:

a) As a consequence of personal injury or loss of life of any person including the Assured's liability according to law for guests present during trials and delivery voyage and during transit to or from the subject matter with another vessel which is owned or chartered by the Assured. Liability under this subsection does not apply to Builders' employees and their surviving relatives.

b) As a consequence of damage to or loss of property belonging to a third party. Liability under this subsection does not apply to damage to or loss of property belonging to Builders' employees.

This insurance does not cover liability for loss recoverable under another insurance.

The term "third party" in this clause refers to others than the Builders.

This insurance does not cover liability that is based only on a contract.

24. Damage to Builders' Yard or Property

The Insurer will cover damage to Builders' Yard or Property caused by collision or striking after launching the subject matter.

25. Wreck removal

The Insurer will cover the Assured's liability relating to the raising, removal, destruction, marking, and lighting of the subject matter (or any parts thereof). The Insurer will also cover expenses incurred in removing the wreck from Builders' Yard or Builders' premises elsewhere or premises employed by Builders if such expenses are in excess of the value of the salvaged, and provided the the removal is considered necessary and the costs are reasonable.

D. Sundry

26. Customs drawback etc

Customs drawback and other subsidies declared at the conclusion of this insurance contract are covered according to the conditions for "Insurance against total loss only", cfr. Clause 14 "Total loss".

Special Clauses

These Clauses apply only if specially agreed upon and duly noted in the Policy.

Special Clause No. 1

War insurance for builders' risks

This insurance is subject to the Conditions for insurance of builders' risks, unless otherwise stated in the following clauses or agreed upon.

1. Scope of the insurance

Subject to the exclusions stated in Sub-clause 2 below, this insurance covers risks of loss of or damage to the subject matter and the Assured's liability, cfr. Clause 1 of the Conditions for insurance of builders' risks, caused by:

- a) War or war-like conditions, or the use of arms or other instruments of war in the course of military manoeuvres in time of peace or during armed neutrality.
- b) Capture at sea, condemnation in prize, confiscation, requisition for title or use and other similar measures taken by an alien governmental authority. By alien governmental authority is understood any governmental authority other than the Builders' state of domicile or states allied thereto, and persons or organizations who unlawfully pretend to be exercising public or intergovernmental authority.
- c) Measures taken by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution damage, when the risk of such damage is caused by perils stated in Clause 2, subsections a) or b).

2. Exclusions

This insurance does not cover risks of loss or damage or liability caused by:

- a) any detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter, hereinafter referred to as a nuclear weapon of war,
- b) the outbreak of war - whether there be a declaration of war or not - between any of the following countries:
United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China.

3. Duration of the insurance

This insurance attaches from the moment the subject matter is launched. Machinery, parts, and materials intended for the subject matter that were not on board the subject matter when it was launched are covered from the moment the machinery etc. was placed on board the subject matter.

4. Termination of the insurance

In the event of an outbreak of war this insurance may be cancelled by either the Insurer or the Assured giving seven days' notice. Such cancellation becomes effective on the expiry of the seventh day from midnight of the day on which the notice of cancellation is issued. The Insurer agrees, however, to reinstate cover prior to the expiry of such notice of cancellation subject to agreement with the Assured as to new rates of premium and/or insurance conditions.

5. Automatic termination

This insurance shall terminate automatically:

- a) upon the occurrence of any hostile detonation of any nuclear weapon of war as defined in Clause 2, subsection a) of this insurance,
- b) upon the outbreak of war - whether there be a declaration of war or not - between any of the following countries:
United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China.

Special Clause No. 2

Insurance of additional costs relating to re-building (Builders/Owners)

1. This insurance is subject to the Conditions for insurance of builders' risks, unless otherwise stated in the following clauses or agreed upon.
2. The sum insured is the amount stated in the Policy (Open Policy).
3. The Insurer will pay the difference between the amount compensated under the Insurance of builders' risks and the costs relating to re-building, including replacement of parts and materials for the subject matter limited, however, to the sum insured.
If the sum insured under the Insurance of builders' risks is lower than the sum stated in the contract for the building of the subject matter, including additional costs, the Insurer will only pay such part of the costs that corresponds to the proportion between the sum insured of the subject matter and the sum stated in the contract for the building of the subject matter, including additional costs.
4. The Insurer's duty to pay compensation arises as and when the costs of repair are incurred. Clause 20 "Invitation to tender" of the Conditions for insurance of builders' risks shall apply correspondingly.

Special Clause No. 3

Insurance of Builders' loss of interest etc. in the event of delayed delivery of the subject matter

1. This insurance is subject to the Conditions for insurance of builders' risks, unless otherwise stated in the following clauses or agreed upon.
2. This insurance covers the Builders' documented loss of interest and penalties etc. as a consequence of delay in delivery due to damage for which the Insurer is liable under the Policy for the Insurance of builders' risks.
3. The sum insured is the amount stated in the Policy (Open Policy).
4. Each casualty as defined in the Conditions for insurance of builders' risks which causes a delay is subject to a deductible amounting to the number of deductible days stated in the Policy. The compensation payable shall be the daily amount and the number of days as stated in the Policy.
5. A period of delay is calculated from the day of delivery agreed upon by Builders and Owners. Notice shall be given to the Insurer of any agreement between Builders and Owners to postpone the day of delivery due to circumstances which do not constitute grounds for compensation under this insurance. This insurance may be continued subject to an additional premium.
6. If delay in delivery is partly attributable to damage which entitles the Assured to recover for loss under the Insurance of builders' risks and partly attributable to causes which may not result in a claim under the said insurance, the Insurer will compensate a proportional part of the loss of interest etc. calculated on the basis of the loss of interest etc. which the two groups of causes of delays would have led to in excess of the deductible period, if the delays had incurred individually.
7. The Insurer will reimburse the Assured for charges incurred in minimizing loss of interest etc. recoverable under this insurance, limited, however, to a sum equalling the amount recoverable if such charges were not incurred. Before taking any measures, the Assured shall consult with the Insurer, if possible (cfr. § 53 of the Plan).
8. In the event of a casualty which may result in a claim under this insurance Clause 19 (Survey of damage) of the Conditions for insurance of builders' risks shall apply correspondingly.

Special Clause No. 4

Insurance of Owners' loss of interest on instalments paid

1. This insurance is subject to the Conditions for insurance of builders' risks, unless otherwise stated in the following clauses or agreed upon.
2. This insurance covers Owners' loss of interest on instalments paid to the Builders in the event of a total loss, cfr. Clause 14 of the Conditions for insurance of builders' risks.
3. The sum insured is the amount stated in the Policy (Open policy).
4. In the event of a total loss the Insurer will compensate the Owners' proven loss of interest on instalments paid to the Builders from the dates the instalments were paid up until the date of the total loss, limited to the sum insured.

Translation of the original Norwegian Text. In case of conflict, the latter shall prevail.

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