

General conditions for Loss of Charter Hire Insurance (1972) (Revised 1993)

This edition of the Loss of Charter Hire Insurance Conditions is a translation from the original Norwegian Wording. In case of conflict the latter shall prevail, except of the Exclusive Norwegian Law and Jurisdiction Clause, which is only necessary for overseas business, and has therefore been originally drafted in the English Language.

EXCLUSIVE NORWEGIAN LAW AND JURISDICTION CLAUSE

It is agreed that all legal actions in connection with all cases, controversies and disputes of all kinds arising under, or in connection with, or relating in any way to this contract of insurance shall be subject to Norwegian Law only (see § 1 below), and shall be instituted in a competent Court in the Kingdom of Norway, exclusively, and it is further agreed that the Insurer(s) subscribing to this contract of insurance shall not be subject to any legal actions in any other court in any other place or country. The Insurer(s) can only be sued in the courts of venue at the place of the main office of the Leading Insurer. This Clause cannot be substituted or deleted without the written consent of the Insurer(s).

§ 1. Applicable law and reference to the Plan.

1. This insurance shall not be subject to the Insurance Contracts Act of 16 June 1989 No. 69. The insurance contract shall be supplemented with the rules contained in the Insurance Contracts Act of 1930 with the insurance practice that has developed in connection with the rules contained therein. However, always provided that it shall be possible in the insurance contract to deviate from all the rules contained in said Act.
2. Unless otherwise stated in the policy wording or in these conditions, The Norwegian Marine Insurance Plan of 1964 («The Plan») shall apply, with the exception of Chapter 20.
3. In addition to § 83 of the Plan, the following shall apply specifically to this insurance: On request, the Assured shall make available to the Insurer all books and papers of account showing the ship's earnings, relevant bills and invoices, the ship's logs and reports associated with the casualty, as well as charterparties or freight contracts which the Insurer may need in connection with the claims settlement. The Insurer shall be allowed to make copies of said documents. The documents mentioned above will not limit the right of the Insurer(s) to demand further documentation and information if this is necessary in order to determine the loss and the claim.
4. Instead of § 83, second paragraph, of the Plan the following shall apply:
If the Assured has fraudulently or dishonestly neglected his duties under § 83, first paragraph, of the Plan, or the rules set out in subsection 3, the Insurer's liability will lapse.

§ 2. Principal rule concerning the Insurer's liability.

The insurance covers loss due to the vessel being wholly or partly deprived of her earning capacity as a consequence of damage sustained. The compensation shall be calculated on the basis of the time the vessel has been deprived of her earning capacity (the loss of time) and the loss of earnings per day (the daily amount).

§ 3. Limitation of the Insurer's liability.

1. The Insurer is only liable for the loss of time, provided that the damage which has caused the loss is recoverable according to the Plan and ordinary Norwegian hull conditions for ocean-going vessels, or would have been recoverable if a deductible had not been agreed upon, see § 189 of the Plan, or similar stipulations in the hull policy.
2. The Insurer is not liable for loss of time in consequence of a casualty which gives the Assured the right to compensation for total loss according to the regulations in Chapter 11 of the Plan, or which is settled by way of a compromise, the Insurer paying at least 75% of the assessed hull value without the right to take over the vessel and without imposing on the insured the duty to repair her.
3. The Insurer is not liable for the Assured's loss in consequence of a freight contract being terminated or cancelled, wholly or partly, by reason of damage sustained by the vessel. The fact that the Assured receives compensation, wholly or partly, for the non-performed part of the transportation due to a freight prepaid and non-returnable clause or an insurance taken out according to Chapter 19 or 23 of the Plan, shall not reduce his right to compensation under this insurance.
4. The Insurer is not liable for any increase in loss of time due to the vessel being chartered on conditions which are not customary in the trade concerned. §§ 78 and 92 - 94 of the Plan shall apply correspondingly where the settlement between the Assured and the charterer is of relevance to the Insurer's liability.

§ 4. Calculation of the loss of time.

1. The loss of time is stipulated in days, hours and minutes.
2. A period in which the vessel has only been partly deprived of her earning capacity, shall be converted into a corresponding period of total loss of earning capacity.
3. Each casualty shall be subject to a deductible period, which shall be reckoned from the beginning of the casualty and shall last until

the loss of time in consequence of the casualty, converted according to the rules in subsection 2, has reached the number of days deductible stated in the policy. Loss of time in the deductible period is not recoverable.

4. The Insurer's liability for loss of time in consequence of any one casualty and for the total loss of time in consequence of all casualties occurring during the insurance period, is limited to the sum insured per day multiplied by the number of days of indemnity any one casualty and in all stated in the policy.
5. Heavy weather damage sustained during the period of time between departure from one port and arrival at the next shall be deemed to be one casualty. Should the insurance attach or expire during this period of time, the Insurer shall cover the same proportion of the total loss of time resulting from all heavy weather damage during the period covered as the proportion between heavy weather days during the insurance period and the total number of heavy weather days in the entire period.
6. The rule in subsection 5 shall apply correspondingly to damage as a consequence of the vessel having passed through ice and to damage caused by grounding or touching of the ground when sailing in shallow waters.

§ 5. Assured's duty to notify the Insurer of casualties and time-limit for notification.

Survey of damage.

1. Attention is specifically drawn to the duties which under §§ 52 and 53 of the Plan lie with the Assured to notify the Loss of Hire Insurer without undue delay if a casualty is impending or has occurred, the Assured's duty to avert or minimize the loss in such cases, and the sanctions which the Insurer can impose in conformity with § 54, of the Plan, if the Assured fails to fulfil these duties.
2. The Assured forfeits his right to claim compensation if he has failed to notify the Insurer of the casualty within six months after the Assured, the master or the chief engineer of the vessel became aware of it, or the Assured ought to have become aware of it.
3. Before any damage is repaired, it shall be surveyed by a representative of the Assured and a representative of the Loss of Hire Insurer. The Assured's expenses for his own surveyor are not recoverable under this insurance.
4. The representatives shall issue survey reports, in which they describe all damage and state their opinions regarding the probable cause of each separate item of damage, the time of their occurrence and the time required to repair them simultaneously and separately, including any waiting time, cf. in this respect § 8, subsection 3.
5. If one of the parties so requires, the representatives shall, before the damage is repaired, submit preliminary reports where they give an estimate of the time required on a discretionary basis, as stated in subsection 4.

6. In the event of a disagreement between the two representatives, they shall appoint an arbitrator, who shall give a reasoned opinion on the questions submitted to him. If the parties fail to reach an agreement on the choice of arbitrator, he shall be appointed in Norway by a public notary or outside Norway by the local Norwegian consul.
7. Neither the Assured nor the Insurer may request a judicial survey of the damage, unless this is required under the laws of the country concerned.
8. If the Assured, without compelling reasons, has the ship repaired without a survey being conducted by the Loss of Hire Insurer or without giving him notice to attend the survey, he has, in addition to the burden of proof under § 19 of the Plan, also the burden of proving that the damage is attributable to causes covered by the insurance, and that the loss of time for which compensation is claimed is reasonable and recoverable.

§ 6. Choice of repair yard.

The Loss of Hire Insurer may demand that an invitation for tenders be issued to yards of his own choice. If the Assured does not invite such tenders, the Loss of Hire Insurer may do so. If the Assured, because of special circumstances, has justifiable reason for objecting to the repairs being carried out by one of the yards that have submitted tenders, he may demand that this yard be disregarded.

The Assured decides which yard is to be used, but the liability of the Insurer shall be limited to

- a) the loss of time under the tender which would have caused the shortest loss of time, plus
- b) one half of the additional loss of time which arises.

§ 7. Costs incurred by saving time.

The Loss of Hire Insurer is liable for extraordinary costs incurred in connection with temporary repairs and other extraordinary measures taken to avert or minimize a loss covered by the insurance, in so far as these costs are not recoverable from the Hull and Machinery Insurers, provided that such measures, considering the voyage, the nature of the cargo, and the prevailing circumstances at the commencement of the voyage, were unforeseeable and of an extraordinary nature, and that they were under the circumstances at the time considered justifiable.

However, the Loss of Hire Insurer is not liable beyond the amount he should have paid if the measures had not been taken.

In case the daily amount in the policy is less than the Assured's loss of hire per day, or if a deductible period has been agreed, these interests shall pay their pro rata share of the extraordinary costs in proportion to what the individual interest has saved by virtue of these measures.

Not covered in accordance with the present Section are:

- a) loss arising through measures taken to save ship and cargo from a common peril, or to save a ship in ballast from an equivalent peril,
- b) loss as mentioned in § 63 of the Plan.

§ 8. Simultaneous repairs.

1. If repairs covered under the insurance are carried out simultaneously with work which is not covered under any loss of hire insurance, but which:
 - a) is carried out to fulfil classification requirements, in connection with or irrespective of periodic surveys, and regardless of whether or not the required work is due at the time of the repairs, or
 - b) is necessary for the seaworthiness of the vessel, including cargo carrying ability («cargoworthiness»), or is associated to reconstruction,
 - c) otherwise concerns strengthening, repairs or maintenance of the ship, with the exception or work which would under no circumstances in itself have necessitated a separate stay at a repair yard,the Insurer shall pay compensation in such cases as mentioned under a) and b) for half of the time common to both classes of work in excess of the deductible period, and in such cases as mentioned under c) for half of the time common to both classes of work which exceeds 30 days.

If repairs resulting from two casualties both covered under this insurance are carried out simultaneously, the rules above shall apply correspondingly for the time which is within the deductible period of one casualty, but not within the deductible period of the other.
2. If repairs covered under this insurance and work covered under other loss of hire insurance are carried out simultaneously, the Insurer shall pay compensation for half of the time common to both classes of work in excess of the deductible period. This also applies where repairs under the other policy are carried out within the deductible period under this policy. Furthermore, if work not covered under any loss of hire insurance, but of such a nature as mentioned under 1 a – c is carried out simultaneously, the Insurer shall only pay compensation for one fourth of the common time of repairs in excess of the deductible period.
3. When applying the rules set out in subsections 1 and 2 above, each class of work shall be deemed to have lasted for the number of days the work would have required if the two classes of work had been carried out separately, counting from the moment the work started. Unless the circumstances clearly indicate another moment, all classes of work shall be deemed to have started on the ship's arrival at the yard. Any delay which might occur due to several classes of work being carried out simultaneously, shall be attributed to all classes in proportion to the number of days mentioned in the first sentence of this subsection.
4. Loss of time due to removing the vessel to a repair yard etc. which cannot be referred to one single class of work, shall be divided between work covered under this insurance, work covered under other loss of hire insurance, and work not covered under any loss of hire insurance, in proportion to the time each class of work would have necessitated if they had been carried out separately.

§ 9. The daily amount.

1. The Assured's loss of earning for each day during which the vessel is deprived of her earning capacity (the daily amount) shall be the amount of freight per day according to the freight contract in force, with deduction of such expenses as the Assured has saved or ought to have saved through the vessel being out of regular employment. If the vessel is not under any freight contract, the daily amount shall be calculated on the basis of the average freight rates for vessels of the type concerned during the period the vessel is deprived of her earning capacity.
2. If it is stated in the policy that a fixed amount per day shall be paid in settlement of the loss, this shall be regarded as an assessed insurable daily amount, unless circumstances clearly indicate otherwise.
3. If the freight contract or contracts in force at the time when the contract of insurance attached, are terminated during the period of insurance, the loss of time accruing thereafter is recoverable in accordance with the rules in subsection 1 above, even if the daily amount is assessed, provided this results in a lower compensation per day. This, however, does not apply if the freight contract terminates in consequence of a casualty covered by the insurance.

§ 10. Loss of time after completion of repairs.

Loss of time in consequence of the vessel not being under any freight contract when the repairs are completed is only recoverable if the type of vessel or normal trade necessitates proceeding in ballast from the yard to the first port of loading.

§ 11. Repairs after expiry of the period of insurance.

1. The Insurer is not liable for loss of time resulting from a stay at a repair yard which commences more than one year after expiry of the period of insurance.
2. Loss of time resulting from a stay at a repair yard which commences after the expiry of the period of insurance, is recoverable according to the rule in § 9, subsection 1, even if the daily amount has been assessed, provided this results in a lower compensation per day.

§ 12. The liability of the Insurer if the vessel is transferred to a new owner.

If the vessel is transferred to a new owner after repairs have been completed, or with unrepaired damage, the Insurer shall compensate the Assured for the loss he can prove he has suffered because the vessel has been taken out of commission, or will have to be taken out of commission by the buyer, while the damage is being repaired, however, not over and beyond a compensation calculated on the basis of the sum insured per day and the time spent or anticipated for the repairs. The rule in § 10 does not apply in these cases.

§ 13. Reimbursement from third party.

The rules of subrogation in § 96 of the Plan shall apply correspondingly to:

- a) the Assured's claim for compensation of loss of time according to § 182 of the Plan,
- b) the Assured's claim for compensation of the operating expenses during removal to repair yard according to § 184 of the Plan,
- c) any other claims the Assured may have for compensation of the loss against another Insurer or in general average.

§ 14. Interest.

1. Instead of § 86, first paragraph, of the Plan, the following shall apply:
The Assured may claim interest on the amount of compensation. As regards compensation of the Assured's disbursements, interest accrues as from the date of disbursement, otherwise as from one month after completion of the repairs.
§ 86, second paragraph, of the Plan applies correspondingly to this insurance.
2. Amendment to the Plan's § 86, third paragraph, and § 90, third paragraph, first sentence:
The rate of interest shall be 8% p.a.
3. Amendment to § 112, third paragraph, of the Plan:
The rate of interest shall be determined in accordance with the provision contained in section 3, subsection 1, of the Interest Act of 17 December 1976.

§ 15. Trading limits.

The rules concerning trading limits in the ordinary Norwegian hull conditions for ocean-going vessels shall also apply to this insurance. When trading in waters during periods where the hull conditions provide for an additional premium, an increased premium shall be paid for this insurance by further agreement.

§ 16. Stay in port. Laid up. At repair yard. Sale of vessel.

1. Amendment to §§ 122 - 125 of the Plan:
Ordinary stay in port entails no right to claim a reduction (return) of the premium.
2. If the vessel has to go to a repair yard, this will not entail any right to claim a reduction (return) of the premium.
3. If the vessel is laid up, other than at a repair yard, the Assured has an option between:
- either maintaining the insurance against payment of full premium as originally agreed,
- or cancelling the insurance against a return of the premium for the remainder of the insurance period, provided that no damage has been sustained which has resulted in, or will result in, any payment of claims under this insurance.
4. If the insurance is terminated because of the sale of the vessel, or if the vessel is lost or condemned, cf. § 3, subsection 2, the premium for the remainder of the insurance period will be returned, provided that no damage has been sustained which has resulted in, or will result in, any payment of claims under this insurance.
5. The Insurer's charge according to § 126 of the Plan shall always be 10% of the premium.

§ 17. Change of ownership. Loss or change of class. Information from the Classification Society, flag state and port authorities.

1. Amendment to § 133 of the Plan:

The insurance terminates automatically:

- a) if the ship is transferred to a new owner by sale or in any other manner,
- b) if there is a change in the technical, maritime or commercial management of the ship.

If more than half of the shares or interests in the company that owns the ship is transferred to a single new owner during the period of insurance, the Insurer shall be informed as soon as possible, and at the latest 14 days after the person effecting the insurance or the Assured became aware of, or ought to have become aware of the transfer. In the event of such a transfer the Insurer may terminate the insurance by giving 14 days' notice. In the event of a breach of the duty to give notice and provided that the Insurer has not otherwise become aware of the transfer of the shares or interests, a deduction of 25% of the sum insured - but not more than NOK 1 000 000, or the equivalent in another currency - shall be made in the settlement of any subsequent claim.

2. Instead of the second paragraph of § 31 of the Plan the following clause shall apply:
At the commencement of the insurance period the vessel must be classed by a classification society approved by the Insurer, unless otherwise agreed.

The insurance shall terminate if the vessel loses its class or is transferred to another classification society, unless the Insurer explicitly agrees to uphold the insurance. If the vessel loses class while at sea, the insurance cover shall not lapse until the vessel has reached the nearest port.

The vessel's class shall be regarded as lost if the Assured or someone on his behalf requests that the class be cancelled, or if the classification society suspends or withdraws the class by other causes than an occurred casualty. The vessel shall within fixed time limits be subject to periodic surveys set by the classification society. If this is not done and a casualty occurs, § 49, first paragraph, first sentence, and second paragraph, of the Plan shall apply correspondingly.

3. Amendment to § 30 of the Plan:
The Insurer (Rating Leader and/or Claims Leader) has the authority to obtain directly from the Classification Society, flag state authorities and port Authorities, any information which the Insurer may deem necessary, provided that the Assured is notified beforehand.