

**DUTCH BOURSE POLICY FOR CONSTRUCTION AND ASSEMBLY WORKS (2013)**

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## G.C.1. GENERAL DEFINITIONS

within the context of this policy, the following terms are - unless otherwise defined in the section conditions - understood to mean:

### G.C.1.1 INSURED PARTIES

- a. the policyholder;
- b. the principal and/or the building management;
- c. the general contractor, contractor(s), subcontractor(s) and installer(s);
- d. the designer(s), architect(s), consultant(s) and constructor(s);
- e. insofar as not mentioned above, any other party involved in the contract works and present at the construction/assembly site in connection with the insured contract works;
- f. the owner of the contract works.

### G.C.1.2 PHYSICAL DAMAGE

An objective, permanent impairment of the form and/or structure of an interest that is/are generally perceived to characterise the physical soundness of the interest.

### G.C.1.3 LOSS

The physical unavailability of an interest, while recovery of said interest is unlikely or the actual direct costs of recovery are equal to or exceed the value of said interest.

### G.C.1.4 LOSS OF PROFITS

Financial loss consisting of the loss of net profit and the recurring overhead charges that are no longer covered by any income as a result of business interruption due to loss and/or physical damage.

### G.C.1.5 FINAL CONTRACT PRICE

The final contract price of the insured contract works, including:

- a. the realised and charged price and wage rises;
- b. the additions and omissions;

and insofar as included under the policy, increased by:

- c. the works outside the scope of the specifications;
- d. the value of the works carried out by the principal and/or the owner;

- e. the value of the (building) components used or made available by the principal and/or the owner;
- f. the VAT (if and insofar as applicable);
- g. the fees of architects, consultants, constructors and designers;
- h. the costs of supervision and inspection by the building management.

#### G.C.1.6 THE CONTRACT WORKS

- a. the object described in the policy on the construction/assembly site designated for final completion of the contract works, whilst under construction and/or completed;
- b. the components that are on the construction/assembly site designated for final completion of the contract works for the account and at the risk of an insured party and that are designated to form a permanent part of the object described in the policy;
- c. the costs of (dis)assembly of auxiliary constructions and auxiliary works such as scaffolding, formwork, sheet piling, moulds or jigs, that are on the construction/assembly site designated for final completion of the contract works and that are necessary in order to construct the object described in the policy as set out in the specifications or the building contract;
- d. the auxiliary constructions and auxiliary works as described under c, if and insofar as their replacement value has been stated on the schedule.

#### G.C.1.7 OCCURRENCE

An event or series of interrelated events arising from one single cause.

#### G.C.1.8 LOSS MITIGATION COSTS

Costs of measures that are taken during the policy period by or on behalf of the policyholder or an insured party and are reasonably required in order to avert the imminent risk of an insured 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 referred to hereinbefore.

#### G.C.1.9 DEBRIS REMOVAL COSTS

The actual costs incurred for the demolition, removal, transport, dumping and destruction of insured interests as a result of loss or damage insured under the policy.

#### G.C.1.10 ENVIRONMENTAL IMPAIRMENT

The emission, discharge, seepage, separation, release or escape of any liquid, solid or gaseous substance, insofar as it has a pungent or contaminating or deteriorating or polluting effect in or on the soil, the air, the surface water or any water (course) whether underground or otherwise.

#### G.C.1.11 PROPERTY OF THE PRINCIPAL

All movable and immovable property other than building components, machinery and equipment and auxiliary structures to be used or made available for the contract works, which are or will be owned by the principal or for which he is liable under an agreement.

#### G.C.1.12 CONTRACTOR'S EQUIPMENT

All of the following interest available on or near the final construction/assembly site in connection with the execution of the contract works:

- a. sheds, huts, including their plant and equipment/contents;
- b. tools and equipment, machines and machinery.

#### G.C.1.13 PROPERTY OF THE BUILDING MANAGEMENT AND PERSONNEL

The personal effects on or near the final construction/assembly site belonging to the building management and to persons employed by an insured party and involved in the contract works.

#### G.C.1.14 TESTING

Starting up and/or submitting to running tests and/or stopping machinery and installations or parts thereof under circumstances that resemble, match or exceed the operation in the definitive situation.

### G.C.2 CONTINGENCY

Unless the parties hereto have explicitly agreed otherwise, 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 or would arise therefrom under normal circumstances.

### G.C.3 PERIODS

#### G.C.3.1 THE POLICY PERIOD COMMENCES ON THE INCEPTION DATE STATED ON THE SCHEDULE AT 00.00 HRS AND EXPIRES IN RESPECT OF:

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##### THE CONSTRUCTION/ASSEMBLY PERIOD:

at 24.00 hrs on the expiry date stated on the schedule or upon completion of the contract works, whichever occurs first;

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##### THE TESTING PERIOD (IF AND INsofar AS AGREED BY CONTRACT):

at 24.00 hrs on the day of expiry of the number days/weeks stated on the schedule to apply as such period within the construction/assembly period referred to hereinbefore or upon completion of the testing procedure, whichever occurs first;

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#### THE MAINTENANCE PERIOD (IF AND INSOFAR AS AGREED BY CONTRACT):

at 24.00 hrs on the day of expiry of the number of weeks/months stated on the schedule to apply as such period following the construction/assembly or testing period referred to hereinbefore.

#### G.C.3.2 EXTENSION OF THE CONSTRUCTION/ASSEMBLY PERIOD

If the contract works have not been completed or have not been entirely put into use on the expiry date of the construction/assembly period stated on the schedule, the policyholder has the right to extend the policy by 3 months based on the same conditions and at a premium not exceeding the amount calculated on a pro rata basis, unless otherwise provided on the schedule.

The policyholder is obliged to notify the insurers of the wish to extend the construction/assembly period prior to its expiry date. Any additional extensions are to be agreed upon.

Should the contract works not have been completed on the expiry date of the construction/assembly period and should parties have failed to reach an agreement on the extension, then any inclusion under the policy of the testing and/or maintenance period will be cancelled against refund of the premium for the testing and/or maintenance period.

#### G.C.3.3 PARTIAL COMPLETION

If parts of the contract works are completed and handed over to the actual principal prior to expiry of the construction/assembly period, then - contrary to the provisions of article G.C.3.1 - the maintenance period for such parts will, if insured, commence on the date of their completion.

#### G.C.3.4 TESTING PERIOD

If the testing procedure has not been completed within the separate testing period stated on the schedule, extension of said period may be agreed at a premium and on conditions to be agreed upon. The policyholder is obliged to notify the insurers of the wish to extend the testing period prior to its expiry date. If parties fail to reach an agreement on the extension, then any loss or damage as a result of tests arising after the testing period stated on the schedule will be excluded from cover.

#### G.C.3.5 DISCOVERY PERIOD

A period of 12 months commencing on the day following the one on which the policy period stated on the schedule expires and within which claims for loss or damage arisen within the policy period but first discovered afterwards, may be reported to insurers.

#### G.C.4 SPECIFICATION OF COVER

This insurance only covers loss or damage and/or liability for loss or damage arisen within the policy period and reported before expiry of the discovery period at the latest, irrespective of the time it was caused.

## G.C.5 PREMATURE CANCELLATION OF THE INSURANCE CONTRACT

The insurers have the right to cancel this insurance contract prematurely in the event of:

### G.C.5.1 BANKRUPTCY OR MORATORIUM

With reference to article G.C. 10.1, the insurers have the right to cancel the insurance contract within 2 months after they first had knowledge of the policyholder's bankruptcy or moratorium petition being filed, subject to 2 months' notice. During this notice period the insurance remains in full force and effect for all insured parties. During this period consultations take place with the broker, the policyholder, the administrator, the liquidator and any other party involved in the contract works about continuation of the insurance for the remaining insured periods. If parties fail to reach an agreement on the continuation within the notice period, the insurance will be terminated as of the cancellation date and the unearned premium will be refunded. This regulation is without prejudice to the provisions of article G.C. 16, meaning that in case of a credit granted by the broker that is still available, the provisions of article G.C. 16 will prevail.

### G.C.5.2 CHANGE IN RISK

This insurance contract has been effected on the basis of the information, design, specifications, plans, drawings and/or any other information supplied by or on behalf of the policyholder. In the event of any change in risk that constitutes an increase in risk of such extent that insurers, had they had knowledge thereof at the time the insurance contract was concluded, would never have accepted it, or not on the same conditions and/or at the same premium rate, the insurers have the right to cancel the insurance prematurely in writing, subject to 2 months' notice. As long as parties have not yet reached an agreement on such a change in risk, no cover is provided for loss or damage resulting from said change.

### G.C.5.3 FRAUD, MISLEADING

In case of non-compliance with any obligation as referred to in article G.C.10 by the policyholder and/or the party entitled to a payment or any third party with the consent of the policyholder and/or the party entitled to a payment with the intention to mislead the insurers, the insurers have the right to cancel the insurance prematurely in writing with immediate effect.

Said premature cancellation will not apply with immediate effect to the other insured parties, to whom in that case the provisions of article G.C.5.1 will be analogously applicable.

## G.C.6 PREMIUM CALCULATION

G.C.6.1 The premium charged upon inception of the insurance is based on the estimated contract price. The definitive premium is determined upon expiry of the construction/assembly period on the basis of the final contract price.



If the final contract price exceeds the estimated contract price, an additional premium will be payable on the surplus.

If the final contract price is less than the estimated contract price, a return of premium will be paid, subject to the minimum premium stated on the schedule, if any.

Settlement will take place on the basis of the premium rate that eventually applies to the insurance.

**G.C.6.2** The policyholder is obliged to submit a statement of the final contract price of the contract works to the insurers within 6 months of expiry of the construction/assembly period and, if so requested, to give the insurers the opportunity to verify said statement.

If the policyholder fails to do so, the insurers have the right to assess the final contract price at the estimated contract price increased by the excess cover percentage as stated on the schedule. Said assessment will be binding upon the policyholder.

#### G.C.7 DEDUCTIBLE

In the event of loss or damage under more than one section as a result of one occurrence, the total claim amount will never be subject to more than once the highest applicable deductible.

#### G.C.8 PRIMARY COVER

This insurance provides primary cover, unless explicitly otherwise provided in the policy.

The insurers waive their right of recourse in respect of other policies of insured parties, unless otherwise provided in the policy.

#### G.C.9 LOSS MITIGATION COSTS

Compensation for loss or damage and/or loss mitigation costs in respect of any one occurrence will never exceed the sums insured stated on the schedule under the relevant sections.

#### G.C.10 OBLIGATIONS OF THE POLICYHOLDER AND/OR PARTIES ENTITLED TO A PAYMENT

##### G.C.10.1 OBLIGATIONS IN CASE OF BANKRUPTCY AND/OR A MORATORIUM

With reference to article G.C. 5.1, the policyholder is obliged, as soon as he has knowledge of a petition being filed for his bankruptcy or moratorium, to notify the insurers thereof as soon as possible. If the policyholder fails to do so, the insurance expires automatically without cancellation by the insurers being required 2 months after the petition for his bankruptcy or moratorium was filed. However, if the broker is still granting credit to the policyholder, cover expires with immediate effect in accordance with and subject to the provisions of articles G.C. 16.2.6 through 16.2.8

#### G.C.10.2 OBLIGATIONS IN CASE OF LOSS OR DAMAGE

As soon as the policyholder or the party entitled to a payment 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:

- a. notify the insurers thereof as soon as they may reasonably be required to do;
- b. supply all relevant information to the insurers;
- c. forward all claim-related documents, such as letters, summonses and settlement proposals, to the insurers;
- d. refrain from doing anything that may prejudice the interests of the insurers;
- e. retain all damaged parts for the purpose of inspection or claim assessment, unless otherwise agreed with the insurers or the appointed claims assessor(s);
- f. render all such assistance as may reasonably be required to assess and settle the claim and to allow the insurers or the appointed claims assessor(s) at their request access to the construction/assembly sites, the contract works or any part thereof that reportedly sustained loss or damage;
- g. leave the settlement of a claim with an injured third party, the conduct of a civil action and, if insurers deem such advisable, the control of the defence in the event of criminal proceedings, as well as all decisions arising from or related to this, to insurers;
- h. observe all instructions from the insurers or the claims assessor(s) appointed by them;
- i. in case of (a presumption of) a criminal offence being related to the claim, report it to the police or any other appropriate authority as soon as possible, yet within 3 business days after discovery at the latest.

In case of non-compliance by the policyholder or an insured party with any of the obligations as referred to under a. through i. of this article, the insurers have the right to reduce the payment of compensation by the loss they incur as a result thereof.

#### G.C.10.3 LOSS PREVENTION

The insured is obliged to take at his own expense the usual precautionary measures the nature and scope of the work require, as well as the measures prescribed by the authorities according to statutory provisions and/or regulations, and to comply with the instructions the insurers explicitly demanded in respect of the execution of the contract works upon conclusion of this insurance contract. If the policyholder or the insured fails to take these measures, the insurers have the right to reduce the payment of compensation by the loss they incur as a result thereof.

#### G.C.10.4 OBLIGATIONS IN CASE OF ANY CHANGE IN RISK

This insurance contract has been effected on the basis of the information, design, specifications, plans, drawings and/or any other information supplied by or on behalf of the policyholder. The policyholder is obliged to notify the insurers as soon as possible of any change in the specifications, plans, drawings, the nature of the work, the method of construction, design or otherwise of such extent that the policyholder knew or should have realised that insurers, had they had knowledge thereof at the time the insurance contract was concluded, would never have accepted it or

would not have accepted it on the same conditions and/or at the same premium rates. Without prejudice to the provisions of article G.C.5.2, in that case the insurers have the right to adjust the premium rates and/or conditions as of the time of the change. As long as no agreement has been reached on said adjustment, no cover is provided for loss or damage resulting from such change.

#### G.C.11 CLAIM SETTLEMENT

Claims are settled with the policyholder who will be deemed to have been irrevocably authorised thereto by all other parties under this policy, on the understanding that said authorisation ends upon a provisional moratorium being granted to or bankruptcy of the authorised representative or in case of the authorised representative otherwise losing free control of his capital or his company going into liquidation.

Damages will be paid to the insured incurring the loss or damage, save in the event of claims as referred to in article 2.7.

#### G.C.12 CLAIMS ASSESSMENT

In the event of a claim being made under this policy, a claims assessor will be appointed by the broker on behalf of and in consultation with insurers. The claims assessor will investigate and report on the cause and circumstances of the occurrence and the extent of the claim.

The claims assessor's fee will be borne by insurers.

If the insurers and the policyholder or their authorised representative fail to reach an agreement about appointment of the claims assessor, the claim will be assessed by two claims assessors, one to be appointed by the authorised representative or the policyholder and one by insurers.

Prior to commencement of their duties, both claims assessors will jointly appoint a third claims assessor, who will in case of a difference in assessments, after having consulted or summoned both claims assessors in writing, as arbitrator have to make a binding assessment of the claim amount, within the limits of both assessments.

The insurers and the policyholder or their authorised representative each bear the fee of their own claims assessor; both parties each bear half of the arbitrator's fee.

In case of a failure to act, either by one of the parties to appoint a claims assessor, or by one of the claims assessors to collaborate on the appointment of an arbitrator, or in case of a failure to reach an agreement on the selection of an arbitrator, an appointment made at the request of either interested party by the president of the Chamber of Commerce in Amsterdam or Rotterdam will be binding upon both parties. The party making such request, will notify the other party thereof forthwith by registered post.

The claim amount thus assessed between claims assessors will be binding upon both parties, unless one of the parties either demonstrates that incorrect data have been used to assess the claim amount or that an error was made in the calculation of the claim amount.

Rendering their assistance in the above does not constitute an admission of liability by insurers.

An assessment agreement within the meaning of Section 7:900 et seq. of the Netherlands Civil Code can only be effected between the policyholder and insurers.

## G.C.13 GENERAL EXCLUSIONS

The insurers are not liable to pay compensation for loss or damage caused by or related to:

### G.C.13.1 ACTS OF WAR

Acts of war are understood to mean:

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#### 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;

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#### 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;

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#### INSURRECTION:

organised violent resistance within a state directed against the public authorities;

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#### CIVIL COMMOTION:

more or less organised violent acts occurring at various locations within a state;

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#### RIOTS:

a more or less organised local violent movement directed against the public authorities;

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#### MUTINY:

a more or less organised violent movement of members of any armed force directed against the authority under which they resort.

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#### TERRORISM:

Any violent act and/or conduct - committed outside the scope of one of the six forms of acts of war as referred to in article 3:38 of the Financial Supervision Act [*Wet op het Financieel Toezicht*] – in the form of an attack or a series of attacks connected together in time and intention as a result whereof injury and/or impairment of health, whether resulting in death or not, and/or loss of or damage to property arises or any economic interest is otherwise impaired, while it is likely that said attack or series - whether or not in any organisational context - has been planned and/or carried out with a view to effect certain political and/or religious and/or ideological purposes.

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#### MALEVOLENT CONTAMINATION:

The spreading (whether active or not) – outside the scope of one of the six forms of acts of war as referred to in article 3:38 of the Financial Supervision Act – of germs of a disease and/or substances which as a result of their (in)direct physical, biological, radioactive or chemical effect may cause injury and/or impairment of the health of humans or animals, whether resulting in death or not, and/or may cause loss of or damage to property or may otherwise impair any economic interest, while it is likely that the spreading (whether active or not) - whether or not in any organisational context - has been planned and/or carried out with a view to effect certain political and/or religious and/or ideological purposes.

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#### PRECAUTIONARY MEASURES:

Any measures taken by the authorities and/or insured parties and/or third parties in order to avert the imminent risk of terrorism and/or malevolent contamination or - if such peril has manifested itself - to minimise the consequences thereof.

### G.C.13.2 NUCLEAR REACTIONS

A 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, educational or (non-military) security purposes, provided that a licence (insofar as required) issued by any central government is effective pertaining to the production, use, storage and disposal of radioactive substances.

'Nuclear facility' is understood to mean a nuclear facility within the meaning of the Nuclear Accidents Liability Act [*Wet Aansprakelijkheid Kernongevallen*] (Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands, 1979-225), as well as a nuclear facility on board a vessel. Insofar as a third party is liable for the incurred loss or damage pursuant to any law or any treaty, the preceding paragraph is not applicable.

### G.C.13.3 CONTRIBUTORY NEGLIGENCE

The insurers do not pay compensation to the policyholder or the party entitled to a payment for any loss or damage caused by their wilful act, recklessness, whether deliberate or not, or evident negligence.

For the application of this exclusion the wilful act, recklessness, whether deliberate or not, or evident negligence of one of the following parties is made subject to the same conditions as the wilful act, recklessness, whether deliberate or not, or evident negligence of the policyholder or the party entitled to a payment:

- a. a member of the board of directors or management if the policyholder or the party entitled to a payment is a legal entity;
- b. the person charged by the policyholder, the party entitled to a payment or the board of directors or management mentioned under a. with the general supervision of the contract works and/or the person entrusted with the general, effective, day-to-day management of the contract works, who has in that context been given the authority to take decisions - at management level - about the execution of the contract works.

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.

**G.C.13.4 LOSS OR DAMAGE THAT DOES NOT MEET THE CONTINGENCY REQUIREMENT AS DESCRIBED IN ARTICLE G.C.2.**

**G.C.14 WAIVER OF RECOURSE**

The insurers will not recover the amounts paid as compensation from an insured, unless the loss or damage is attributable to a wilful act, recklessness, whether deliberate or not, or evident negligence of the insured concerned.

**G.C.15 ACCESS TO THE CONSTRUCTION/ASSEMBLY SITE**

The insured parties are obliged to allow insurers and their representatives access to the construction/assembly site, to provide the required information and render all such assistance as may be required.

**G.C.16 PAYMENT OF PREMIUM AND CLAIMS**

**16.1 DEFINITIONS**

- 16.1.1 For the application of this article 'premium' is deemed to include any other amount payable by the insured in connection with insurance cover being provided.
- 16.1.2 For the application of this article 'insured' is deemed to include the policyholder as well as any other party who owes the premium.

**16.2 PREMIUM**

- 16.2.1 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 the insurers for the premium payable by the insured under the insurance contract, at which point the insured will be discharged towards the insurers.

- 16.2.2 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.
- 16.2.3 Save in the event of bankruptcy or a moratorium being granted as provided for hereinafter under G.C. 16.2.6 through 16.2.9, the broker grants the insured credit for the payment of the premium referred to under G.C.16. The broker may cancel the credit in writing subject to 14 days' notice.
- 16.2.4 Upon conclusion of this insurance 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 and the broker therefore cancels the credit.
- 16.2.5 The broker will not release the insurers from their obligations without prior written notice of such intention to the insured, subject to 14 days' notice.
- 16.2.6 In case of the insured being bankrupt or being granted a moratorium, the credit granted under the provisions of G.C. 16.2.3 is cancelled immediately and the insureds are released from their obligations under the insurance contract arising afterwards.
- 16.2.7 These legal consequences take effect solely by the bankruptcy or moratorium being ordered without prior notice of default being required. However, cover for the other insured parties and/or estate can still be reinstated and with retroactive effect in consultation with the other insured parties, the insurers, the broker and the liquidator or administrator, therefore also in respect of any loss or damage occurred after the date of the bankruptcy or moratorium order, if and insofar as the broker has been given security about payment of the total premium then due.
- 16.2.8 The relevant consultations can take place 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 the insured or the administrator or liquidator of the credit being cancelled and the insurers being released from their obligations and of the authority to arrange for cover to be reinstated.

16.2.9 The provisions of this article pertaining to bankruptcy or moratorium do not prejudice the rights of insurers under the provisions of articles G.C. 5.1 and G.C. 10.1.

### 16.3 PAYMENT OF CLAIMS AND RETURN OF PREMIUM

16.3.1 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.

16.3.2 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.

### A.V 17 LIMITATION OF LEGAL CLAIM

G.C.17.1 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 party entitled to the payment first had knowledge of the claimability thereof.

G.C.17.2 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 insurers either admitted the claim or explicitly notified to have refused the claim.

- G.C.17.3 In case of insurance against liability, the limitation period is, contrary to the provisions of article G.C. 17.2, first sentence, interrupted by each negotiation between the insurers 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 insurers either admitted the claim or explicitly notified the party with whom they have been negotiating and, if this another, the party entitled to the payment, that they cease the negotiations.

## G.C.18 REGULATION FOR THE SETTLEMENT OF DISPUTES

All disputes concerning this insurance contract will be subject to the jurisdiction of the competent court in Amsterdam or Rotterdam, unless the insured and insurers agree to settle the dispute by arbitration or otherwise. In case of arbitration, parties will by mutual agreement appoint an impartial person, whose award - rendered after examination of all relevant facts - will be binding upon both parties. If one of the parties deems it desirable or if parties fail to reach an agreement on the appointment of an impartial person, the dispute will be submitted to an arbitration board of three impartial persons. In that case both parties will each assign a member to said board, while the two persons thus assigned will appoint the third member by mutual agreement. The award rendered by this board will be binding upon both parties. If one of the parties fails to appoint a member to the board or if the members appointed by the two parties fail to reach an agreement on the appointment of the third member, the dispute will still be subject to the jurisdiction of the competent court in Amsterdam or Rotterdam. Parties commit themselves to share the arbitration costs on a fifty-fifty basis, unless they order the board by appointment deed to decide on the division of costs between parties. The arbitrators will render their award based on reasonableness and fairness.

## G.C.19 DATA PROTECTION

The personal details provided with the proposal for this insurance and any further personal details to be submitted, may be incorporated in a register of personal data. This registration is subject to data protection rules.

## G.C.20 FINAL PROVISIONS

- G.C.20.1 All notices and communications from the insurers and the insured (parties) intended for each other are deemed to have been duly made when directed to the broker. All notices and communications from the broker directed to the insured (parties) named on the schedule at their last-known address are deemed to have been duly made.
- G.C.20.2 If special conditions have been incorporated in the schedule that are contradictory to one or more provisions of the separate Section Conditions or the General Conditions, these special conditions prevail. In case of any contradiction between the Section Conditions and the General Conditions, the former prevail.
- G.C.20.3 Applicable law

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

G.C.20.4 This is a translation of the original Dutch wording. The official title of these conditions is: “Nederlandse Beurspolis voor Bouw- en Montagewerken”. The wording is available via the website of the Coöperatieve Vereniging Nederlandse Assurantie Beurs B.A., [www.vnab.nl](http://www.vnab.nl).

## CONDITIONS SECTION 1: THE CONTRACT WORKS

### 1.1 COVER DURING THE CONSTRUCTION/ASSEMBLY AND TESTING PERIODS

During the construction/assembly and testing periods the insurance covers any loss or damage incurred by an insured as a result of loss of and/or physical damage to (a part of) the contract works due to contributory negligence, inherent defect or any other cause, provided that the insured is able to prove that the loss or damage arose within the construction/assembly or testing period and he reported the relevant claim - without prejudice to the provisions of article G.C.10.2 - to insurers before expiry of the period specified in article G.C.3.5.

### 1.2 COVER DURING THE MAINTENANCE PERIOD

If it is stated on the schedule that a maintenance or warranty period has been included under the policy, the same cover applies during this period as during the construction/assembly and testing periods, insofar as any loss or damage – without prejudice to the provisions of article G.C.10.2 – has been reported to insurers before expiry of the discovery period as specified in article G.C.3.5, and provided that:

- a. such loss or damage is directly related to the performance of activities pursuant to obligations under the maintenance terms of the specifications or activities still to be carried out under the building contract (Visits Maintenance);
- b. cover as under a., extended by loss or damage caused in the construction/assembly or testing period and on the construction/assembly site (Extended Maintenance);
- c. cover as under a., extended by loss or damage caused prior to inception of the maintenance period (Guarantee Maintenance).

### 1.3 ADDITIONAL COVER

1.3.1 The insurance also covers the debris removal costs incurred as a result of an insured loss or damage. Compensation under this article is limited to the amount stated on the schedule, even if the limit of indemnity according to article 1.6 is thereby exceeded.

1.3.2 Contrary to the provisions of article G.C. 8, this insurance also covers loss of and/or physical damage to materials designated to be used for the construction/assembly whilst in transit within the Netherlands up to and not exceeding the amount stated on the schedule, however, only insofar as this risk is not insured elsewhere.

### 1.4 COVER FOLLOWING LOSS OR DAMAGE

1.4.1 With respect to any loss or damage that is repaired in the construction/assembly period, the insurance will, regardless of the amounts of claims and/or costs paid, remain effective for the full sum insured without payment of an additional premium.

- 1.4.2 With respect to any loss or damage that is repaired in the maintenance period, cover according to article 1.1 will only be reinstated for the repair and/or replacement work after payment of an additional premium based on the same premium rate.

## 1.5 EXCLUSIONS

In addition to the general exclusions are excluded from this insurance:

- a. loss of and/or damage to the contract works or any part thereof that has/have been put into use prior to completion for purposes other than the construction, insofar as said loss and/or damage is the direct result of such use;
- b. loss of and/or damage to the contract works or any part thereof due to fire, explosion or lightning during the maintenance period of the contract works;
- c. loss or damage covered by an agreed warranty on components. If in case of loss or damage, the warrantor is found to dispute his liability or to default in whole or in part on the performance of his obligations towards the insured, then insurers will extend an interest-free loan to the insured concerned amounting to the sum that could be claimed under this insurance had this provision not been applicable, provided that the insured is able to prove that he has, for at least six months following the discovery of the loss or damage, made all such attempts as may reasonably be expected to force the warrantor to comply with his obligations.

This loan is extended on the express condition that the insured renders all such assistance as insurers may require to recover the loss from the warrantor, including instituting legal proceedings in the insured's name, yet for account of insurers. Repayment of the loan is only required insofar as the recourse action against the warrantor is successful;

- d. faults, defects or failures in materials, design or the performance of activities. However, if such faults, defects or failures result in loss of and/or physical damage to the contract works, this exclusion will not apply. In that case, however, insurers do not compensate:
  - 1) the additional costs resulting from the use of materials of a higher or different quality than the damaged materials and/or the additional costs for any improvement of or alteration to the design and/or construction method;

**The following provision is only applicable if explicitly stated on the schedule.**

- 2) the repair and/or replacement costs of parts of the contract works built or assembled on the construction/assembly site, which the insured (parties) would have had to incur in any case in order to remedy the faults, defects or failures in question immediately after the faulty forming, construction, manufacturing or working process (including curing) if the loss and/or physical damage had not arisen (yet) while said faults, defects or failures had been discovered immediately after completion of the activities.

- e. loss of profits as well as costs incurred to prevent loss of profits, including costs resulting from delay in the contract works and in the performance of and negotiations on contracts;
- f. loss or damage that is necessarily caused or the inevitable result of the work, unless such loss or damage is caused for the purpose of repair of an insured loss or damage;
- g. the materials used to construct auxiliary structures and auxiliary works, insofar as these materials are not designated to be a permanent part of the contract works, unless these materials are specifically insured under the policy;
- h. loss or damage consisting of normal wear and tear, normal corrosion, normal oxidation or any other normal deterioration in quality. This exclusion applies to that part of the insured contract works that is directly affected by one of the aforementioned actions and does therefore not apply to the damage arising as a result thereof;
- i. loss due to disappearance or missing if such disappearance or missing is first revealed by a normal stock-taking;
- j. loss or damage due to loss of materials of auxiliary structures and/or auxiliary works, if following the use of these materials in the contract works, they are no longer available afterwards.

## 1.6 LIMIT OF INDEMNITY

In case of repair and/or replacement, the amount payable as indemnity will be based on the cost of repair and/or replacement. If no repair and/or replacement is carried out, the amount payable as indemnity will be assessed in reasonableness and fairness, yet limited to the cost of repair and/or replacement.

Compensation under this section is limited to the sum stated on the schedule in respect of any one occurrence, where applicable, increased by the excess cover percentage, the additional coverage for transport costs, the debris removal costs and the loss mitigation costs. The insurers will not invoke underinsurance.

## CONDITIONS SECTION 2: THIRD-PARTY LIABILITY

### 2.1 DEFINITIONS

#### 2.1.1 LOSS OR DAMAGE

Loss or damage is understood to mean bodily injury and property damage.

Bodily injury is understood to mean: injury or impairment of health of persons, whether resulting in death or not, including any loss or damage arising as a result thereof.

Property damage is understood to mean: damage to or loss or destruction of tangible interests (including animals) as well as the pollution or contamination of any tangible interest and the presence of foreign substances thereon or therein, including any loss or damage arising as a result thereof.

#### 2.1.2 INSURED PARTIES

This section covers the liability of:

- a. the parties insured under this policy which also include the parent company, sister or subsidiary companies of an insured party or in case of an insured party being a legal entity under public law, its departments, offices, agencies and ministries;
- b. the directors, members of the supervisory board, partners, officers, as well as the subordinates of the parties mentioned under a.;
- c. the parties mentioned under a. and b. towards each other and mutually.

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### 2.1.3 THIRD PARTY

A third party within the meaning of this section is any party other than the insured held liable.

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### 2.1.4 COVER DURING THE CONSTRUCTION/ASSEMBLY AND TESTING PERIODS

Insured is the liability of an insured for any loss or damage arisen during the construction/assembly or testing period and caused as a result of or in connection with the execution of the contract works on the construction/assembly site and/or in its immediate vicinity, provided that the insured reported the relevant claim - without prejudice to the provisions of article G.C.10.2 - to insurers before expiry of the period specified in article G.C.3.5.

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### 2.1.5 COVER DURING THE MAINTENANCE PERIOD

If it is stated on the schedule that a maintenance or warranty period has been included under the policy, the same cover applies during this period as during the construction/assembly and testing periods, insofar as any loss or damage – without prejudice to the provisions of article G.C.10.2 – has been reported to insurers before expiry of the discovery period as specified in article G.C.3.5, and provided that:

- a. such loss or damage is directly related to the performance of activities pursuant to obligations under the maintenance terms of the specifications or activities still to be carried out under the building contract (Visits Maintenance);
- b. cover as under a., extended by loss or damage caused in the construction/assembly or testing period and on the construction/assembly site (Extended Maintenance);
- c. cover as under a., extended by loss or damage caused prior to inception of the maintenance period (Guarantee Maintenance).

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## 2.2 LIMIT OF INDEMNITY

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### 2.2.1 SUM INSURED

The insurers provide indemnity in respect of any one occurrence for all insured parties collectively up to and not exceeding the sum insured stated on the schedule under section 2.

Cover provided under this section applies to all parties insured under this policy as if each party were separately insured, however, on the understanding that the liability of insurers for claims resulting from one single cause will never exceed the limits of indemnity insured under this section, even if several parties insured hereunder are liable for the same occurrence.

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### 2.2.2 ADDITIONAL COSTS

Insurers compensate, where required in excess of the sum insured referred to in article 2.4.1, up to and not exceeding the amount stated on the schedule,

- a. the costs of defence against claims, whether rightful or not, from injured parties, as well as the costs of litigation resulting from any legal proceedings the insured may be ordered to pay, provided that the control of said defence rests with insurers in accordance with the provisions of article G.C.10.2 under g.;
- b. the costs of legal assistance in criminal proceedings instigated against an insured, if insurers avail themselves of the authority granted to them by article G.C.10.2 under g.;
- c. the legal interest insofar as accrued on the part of the principal sum covered by this insurance.

### 2.3 EXCLUSIONS

In addition to the general exclusions is excluded from this insurance the liability for:

- a. property damage to the contract works (G.C.1.6), property of the principal (G.C.1.11), contractor's equipment (G.C.1.12) and property of the building management and personnel (G.C.1.13);
- b. property damage, including any loss or damage arising as a result thereof, to interests that belong to the insured or are in the care, custody or under the control of the insured or any other party on his behalf for any reason whatsoever at the time such damage was caused;

This exclusion on account of care, custody and control does not apply to interests:

1. that are not actually being treated or processed by the insured at the time loss or damage was caused;
  2. that are in the care, custody or under the control of an insured party for reasons other than on lease, hire, loan or for safekeeping if and insofar as in respect thereof compensation has been paid by a property insurer.
- c. loss or damage caused with or by a motor vehicle, vessel or aircraft. This exclusion does not apply to loss or damage caused with or by a motor vehicle on the construction/assembly site or in its immediate vicinity in connection with the execution of the contract works, with the exception of loss or damage that is the result of the motor vehicle participating in traffic on the construction/assembly site or in its immediate vicinity;
  - d. claims consisting of loss of profits and/or time lost and/or business interruption of an

- insured party and/or a future owner and/or user or occupant of the contract works;
- e. claims resulting from a penalty, indemnity, warranty, hold-harmless or any similar clause, except if and insofar as liability would also have existed without such a clause;
  - f. claims related to environmental impairment, unless the environmental impairment is the result of a sudden accidental occurrence and not the direct consequence of a process of gradual action or effect;
  - g. claims arising from Section(s) 7:658 and/or 7:611 of the Netherlands Civil Code;
  - h. bodily injury, death or impairment of health of any person directly involved in the contract works;
  - i. claims resulting from a legitimate act;
  - j. loss or damage compensated by another insurer or social security institution.

## 2.4 OBLIGATIONS OF THE INSURED

The insured is obliged to refrain from doing anything that may prejudice the interests of insurers and particularly refrain from admitting any liability.

## 2.5 CLAIMS SETTLEMENT

Insurers have the right to reach an understanding with and indemnify any injured party directly.

Claims made by any injured party for compensation of bodily injury will be handled and settled in compliance with the provisions of Section 7:954 of the Netherlands Civil Code.

## CONDITIONS SECTION 3: PROPERTY OF THE PRINCIPAL

### 3.1 COVER

During the construction/assembly, testing and maintenance periods the insurance under this section covers any loss of and/or physical damage to property of the principal, provided that such loss or physical damage arises as a direct result of the execution of the contract works and the insured reported the relevant claim - without prejudice to the provisions of article G.C.10.2 - to insurers before expiry of the period specified in article G.C.3.5.

### 3.2 ADDITIONAL COVER

This insurance also covers the debris removal costs necessarily incurred as a result of an insured loss or damage. Compensation under this article is included in the sum insured stated on the schedule under section 3.

### 3.3 EXCLUSIONS

In addition to the general exclusions are excluded from this section:

- a. damage to (any part) of the contract works in respect whereof the construction/assembly period has not yet expired;
- b. loss and/or physical damage due to fire and/or explosion;



- c. loss of profits as well as costs incurred to prevent loss of profits;
- d. money and monetary instruments;
- e. damage necessarily caused for the purpose of the contract works, unless such damage is caused for the purpose of repair of an insured loss or damage;
- f. loss or damage related to environmental impairment, unless the environmental impairment is the result of a sudden accidental occurrence and the environmental impairment is not the direct consequence of a process of gradual action or effect.

### 3.4 COMPENSATION

3.4.1 In the event of loss or damage, insurers compensate:

- a. the cost of repair, on the understanding that for interests that are subject to wear and tear, a reasonable new-for-old deduction will be applied for normal wear and tear. Additional costs for the use of interests of another type or quality than the damaged ones do not qualify for compensation;
- b. if repair is not possible or the cost of repair or replacement exceeds the difference between the pre-loss and post-loss values of the interest concerned, only the difference between said values.

3.4.2 If the insured wishes to include under the policy the repair of an insured damage to interests insured under section 3, this risk must be presented for acceptance prior to commencement of the repair work. Without the explicit consent of insurers, this policy does not provide cover for said risk.

### 3.5 LIMIT OF INDEMNITY

The sum stated on the schedule under section 3 applies as limit of indemnity on a first-loss basis, regardless of the full value of the insured interests. The insurers will therefore not be able to invoke underinsurance.

The insurers provide indemnity in respect of any one occurrence for all insured parties collectively up to and not exceeding the sum insured stated on the schedule under section 3 for the aggregate of repair and/or replacement costs, including debris removal costs and loss mitigation costs. The insurers will not invoke underinsurance.

## CONDITIONS SECTION 4: CONTRACTOR'S EQUIPMENT

### 4.1 COVER

During the construction/assembly, testing and maintenance periods the insurance under this section covers any loss of and/or physical damage to contractor's equipment, provided that the insured reported the relevant claim - without prejudice to the provisions of article G.C.10.2 - to insurers before expiry of the period specified in article G.C.3.5.

## 4.2 ADDITIONAL COVER

Cover under this section includes loss of and/or physical damage to contractor's equipment during transport to and from the construction/assembly site within the Netherlands up to and not exceeding the sum stated on the schedule, yet only insofar as said risk is not insured elsewhere and the transport does not involve carriage by sea or air.

### 4.2.1 ADDITIONAL COVER (2)

This insurance also covers the debris removal costs necessarily incurred as a result of an insured loss or damage. Compensation under this article is included in the sum insured stated on the schedule under section 4.

## 4.3 EXCLUSIONS

In addition to the general exclusions is/are excluded from this section:

- a. loss due to disappearance of contractor's equipment, if such disappearance is first revealed by stock-taking;
- b. damage to sailing and floating contractor's equipment, aircraft, cranes, draglines, motor vehicles, bulldozers and any other mechanically propelled means of transport or machinery and equipment;
- c. money and monetary instruments;
- d. loss of profits as well as costs incurred to prevent loss of profits;
- e. loss or damage resulting from machinery breakdown and/or machinery failure, however, on the understanding that this exclusion only applies to that part of the object where the machinery breakdown or failure originated.

## 4.4 COMPENSATION

In the event of loss or damage, the insurers compensate:

- a. the cost of repair, on the understanding that for interests that are subject to wear and tear, a reasonable new-for-old deduction will be applied for normal wear and tear;
- b. if repair is not possible or the cost of repair or replacement exceeds the difference between the pre-loss and post-loss values of the interest concerned, only the difference between said values.

## 4.5 LIMIT OF INDEMNITY

The sum stated on the schedule under section 4 applies as limit of indemnity on a first-loss basis, regardless of the full value of the insured interests. The insurers will therefore not be able to resort to underinsurance.

The insurers provide indemnity in respect of any one occurrence for all insured parties collectively up to and not exceeding the sum insured stated on the schedule under section 4 for the aggregate of repair and/or replacement costs, including debris removal costs and loss mitigation costs.

## CONDITIONS SECTION 5: PROPERTY OF THE BUILDING MANAGEMENT AND PERSONNEL

### 5.1 COVER

During the construction/assembly, testing and maintenance periods the insurance under this section covers any loss of and/or physical damage to property of the building management and personnel if and insofar as the insured is liable for this pursuant to the building contract or otherwise.

#### ADDITIONAL COVER

This insurance also covers the debris removal costs necessarily incurred as a result of an insured loss or damage. Compensation under this article is included in the sum insured stated on the schedule under section 5.

### 5.2 EXCLUSIONS

In addition to the general exclusions is/are excluded from this section:

- a. loss due to disappearance of personal effects, if such disappearance is first revealed by stock-taking;
- b. tools, installations and other plant and equipment used for execution of the contract works;
- c. money and monetary instruments;
- d. any loss or damage directly or indirectly resulting from damage to personal effects;
- e. motor vehicles, trailers, caravans and sheds, as well as their contents.

### 5.3 COMPENSATION

In the event of loss or damage, the insurers compensate:

- a. the cost of repair, on the understanding that for interests that are subject to wear and tear, a reasonable new-for-old deduction will be applied for normal wear and tear;
- b. if repair is not possible or the cost of repair or replacement exceeds the difference between the pre-loss and post-loss values of the interest concerned, only the difference between said values.

### 5.4 LIMIT OF INDEMNITY

The sum stated on the schedule under section 5 applies as limit of indemnity on a first-loss basis, regardless of the full value of the insured interests. The insurers will therefore not be able to invoke underinsurance.

The insurers provide indemnity in respect of any one occurrence for all insured parties collectively up to and not exceeding the sum insured stated on the schedule under section 5 for the aggregate of repair and/or replacement costs, including debris removal costs and loss mitigation costs.

*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 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.*

*The official title of these conditions is: 'Dutch Bourse Policy for Construction and Assembly Works (2013)'. The wording is available via the website of the Coöperatieve Vereniging Nederlandse Assurantie Beurs B.A., [www.vnab.nl](http://www.vnab.nl).*