

**STANDARD DUTCH BOURSE CONDITIONS FOR COMPREHENSIVE LOSS OF PROFITS INSURANCE (2006)**

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This contract shall meet the contingency requirement as referred to in Section 925 of Book 7 of the Netherlands Civil Code, if and insofar as the loss or damage in respect whereof indemnity is claimed, is the result of an occurrence regarding which it was uncertain to the parties at the time the insurance contract was concluded that loss or damage on the part of the insured had arisen therefrom or would arise therefrom under normal circumstances, as provided in article 2.1 of these conditions.

## ARTICLE 1 DEFINITIONS

This article contains the definitions of the terms printed in *italics*<sup>1</sup> in this document.

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

### 1.1 SALVAGE COSTS

Costs and sacrifices which can be valued in terms of money in connection with measures which are taken by or on behalf of the *insured* and are reasonably required in order to prevent the imminent materialisation of the insured peril/event or in order to minimise loss or damage resulting from the materialisation of the risk.

### 1.2 GROSS PROFIT

The proceeds from the business operations reduced by the *variable costs*. This equals the overhead expenses increased by the net profit or otherwise reduced by the net loss.

### 1.3 EFFECTIVE AMOUNT

The *gross profit* over a period equal to the agreed *indemnity period*.

### 1.4 EUROPE

The Member States of the European Union, Andorra, (Turkish) Cyprus, Iceland, the Channel Islands, Liechtenstein, Monaco, Norway, San Marino, and Switzerland.

### 1.5 INCREASE IN COST

The costs which are incurred in order to minimise the loss of profits.

### 1.6 RISK OBJECTS

The buildings, machinery/equipment, and/or goods in the buildings at the address(es) specified in the schedule.

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<sup>1</sup> Except where they appear in square brackets.

## 1.7 ANNUAL INTEREST

The *gross profit* over the period of one year.

## 1.8 RECONSTRUCTION COSTS

The costs incurred during the *indemnity period* in order to reconstruct and/or reproduce any administrative and financial data, drawings, etc. which are necessary for the continuation of the business – regardless of the way they were recorded - and to reincorporate them in the administration of the *insured*.

## 1.9 INDEMNITY PERIOD

The period which commences on the day the *loss of profits* arises and expires when the business operations are not affected by the event/peril that caused the loss or damage any longer or upon expiry of the *indemnity period* limit stated in the schedule, whichever is earlier, irrespective of the expiry date of the policy.

## 1.10 VARIABLE COSTS

The costs which depending on the level of the business operations increase or decrease.

## 1.11 INSURERS

The parties who jointly bear the insured risk, each for their respective share in the sum insured.

## 1.12 INSURED

The natural person or legal entity named as such in the schedule, subject to the provisions of article 11. The *insured* shall also be deemed to be the *policyholder* unless another party is named as *policyholder* in the schedule.

## 1.13 POLICYHOLDER

The natural person or legal entity who has taken out the insurance. The *policyholder* shall also be deemed to be (one of) the *insured* (parties).

## 1.14 REAL INTEREST

The *insured's* interest in the preservation of the *risk objects* on account of ownership or any other real right or his bearing the risk for the preservation thereof.

## ARTICLE 2 EXTENT OF COVER

### 2.1 COVER

The insurance shall cover the *real interest* against loss of profits if and insofar as the loss is the result of an occurrence regarding which it was uncertain to the parties at the time the insurance contract was concluded that loss on the part of the *insured* had arisen therefrom or would arise therefrom.

Loss of profits shall be understood to mean:

the reduction in *gross profit* – after deduction of any savings – of the business of the *insured* as specified in the schedule, which arose during the *indemnity period* as a result of loss of or damage to the *risk objects* arising during the period of insurance, caused by the perils/events mentioned in this article, whether said perils/events are caused by the nature of or any defect in the *risk objects* or not.

Loss of profits as a result of loss of or damage to the *risk objects* irrespective of the cause thereof – except for the exclusions mentioned in article 2.4 – shall be covered if such cause is the direct result of an insured peril/event, regardless where this occurred.

## 2.2 PERILS/EVENTS:

### 2.2.1 FIRE

A fire caused by combustion and combined with flames outside a seat of fire which is able to spread on its own accord.

Therefore, fire shall not include:

- singeing, scorching, melting, charring, heating;
- burning out of electrical equipment and engines;
- overheating, burning out, bursting of ovens and boilers.

### 2.2.2 EXPLOSION

Directly caused by a sudden, violent manifestation of energy from gases or vapours, subject to the following provisions.

In order to establish whether an occurrence qualifies as an explosion, the following distinction shall have to be made.

#### 2.2.2.1 Inside a vessel

Inside a vessel - closed or otherwise - an opening must have been caused in the wall of the vessel by the pressure of the gases or the vapours therein, and the pressures inside and outside the vessel must suddenly have become equal to each other because of said opening.

How the gases or vapours were formed and whether or not they existed before the explosion occurred shall not be relevant.

#### 2.2.2.2 Outside a vessel

Outside a vessel, the manifestation of energy must be the direct result of a chemical reaction.

2.2.2.3 Explosion shall not be understood to mean implosion.

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#### 2.2.3 AIRCRAFT AND SPACECRAFT

Being struck by a departing, flying, landing or crashing aircraft or spacecraft, or by a projectile, explosive or any other object attached to, detached from, dropped from or fallen from such aircraft or spacecraft.

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#### 2.2.4 STROKE OF LIGHTNING

Loss of profits as a result of loss of or damage to electrical and electronic equipment due to overvoltage/induction shall not be covered unless the object in which said property is located shows traces of a stroke of lightning.

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#### 2.2.5 OVERVOLTAGE/INDUCTION

Due to a lightning discharge other than within the meaning of article 2.2.4.

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#### 2.2.6 STORM

A wind speed of at least 14 metres per second.

If the wind speed is alternately above and below 14 metres per second, the period from the moment when the wind speed first reached 14 metres per second until the beginning of a period of at least 24 consecutive hours during which the wind speed was 10 metres per second or less shall be regarded as a single event for the purpose of establishing the number of times the deductible shall be applied.

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#### 2.2.7 AIR PRESSURE

As a result of aircraft or spacecraft starting and/or being submitted to a running test or breaking the sound barrier.

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#### 2.2.8 WATER, STEAM, PRECIPITATION, EXTINGUISHING AGENT

2.2.8.1 Water, steam or extinguishing agent flowed or overflowed from pipes situated either inside or outside the building, or any appliance or installation of water pipes, central heating and sprinklers etc. connected thereto, as a result of bursting due to frost, breakage, fracture, blockage or any other suddenly occurring defect.

2.2.8.2 Rain or melt water which entered the building unforeseen, provided that it did not enter the building through open windows, doors, shutters or hatches.

2.2.8.3 Hail or snow, provided that it did not enter the building through open windows, doors, shutters or hatches.

2.2.8.4 Water and any other contents of aquariums as a result of a breakage or defect therein.

2.2.8.5 Loss or damage as a result of moisture permeating walls, structural defects or poor maintenance of the building shall be excluded.

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#### 2.2.9 THEFT

Theft of materials belonging to the building, as well as damage to said building as a result thereof.

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#### 2.2.10 BURGLARY

Burglary, theft or an attempt thereto at which the perpetrator entered or attempted to enter the building in which the insured *risk objects* are located by means of forcible entry from outside said building or any adjoining building with which it is connected internally.

If the building houses more than one company, institute, etc., the aforementioned provision shall be deemed to be complied with if the perpetrator entered or attempted to enter the part of the premises used by the *insured* by means of forcible entry.

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#### 2.2.11 VANDALISM

After the perpetrator has entered the building illegally.

This cover shall not apply to buildings or parts thereof which have become disused.

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#### 2.2.12 EXTORTION AND/OR ROBBERY

on condition that it is accompanied by violence or duress.

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#### 2.2.13 GLASS BREAKAGE

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#### 2.2.14 CRASH, COLLISION AND FALLEN OFF OR Poured OUT CARGO AS A RESULT THEREOF

Loss of profits as a result of loss of or damage to the vehicle or vessel or the load which caused the loss or damage shall not be covered.

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#### 2.2.15 OIL AND OTHER LIQUIDS

Discharged or leaked from stationary heating or cooking installations or pipes and tanks which are part thereof as a result of breakage, fracture, blockage or any other suddenly occurring defect.

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#### 2.2.16 SMOKE EN SOOT

Suddenly emitted from a heating or cooking installation connected to an air duct.

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#### 2.2.17 BREAKDOWN OR FAILURE OF UPRIGHT OR CHEST-TYPE REFRIGERATORS AND FREEZERS

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#### 2.2.18 COLLAPSE OF CRANES, HYDRAULIC ARMS, PILING FRAMES, WINDMILLS, ANTENNAS, TREES, FLAGPOLES, LIGHTING AND TRANSMITTING MASTS AND/OR DISLODGE­MENT OF PARTS THEREOF.

Loss of profits as a result of loss of or damage to the property causing the loss or damage shall not be covered unless such loss of profits has been caused by another insured peril/event.

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#### 2.2.19 CUTTING AND/OR PRUNING OF TREES

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#### 2.2.20 CORROSIVE SUBSTANCES

Insofar as the loss or damage has not arisen as a result of cleaning, repairs, renewal or production faults.

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#### 2.2.21 STRIKE

The joint failure by a number of employees in a company to carry out part or all of the work legitimately assigned to them.

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#### 2.2.22 RIOTS OR DISTURBANCES

Incidental collective manifestations of violence.

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#### 2.2.23 METEORITES

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#### 2.2.24 LANDSLIDE

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#### 2.2.25 HORSES AND LIVESTOCK

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### 2.3 INACCESSIBILITY, FAILURE OF PUBLIC UTILITIES

Loss of profits shall also be covered if it is caused by:

2.3.1 the inaccessibility of any *risk object* as a result of loss of or damage to nearby property due to an insured peril/event.

2.3.2 a failure in the supply of electricity, gas or water as a result of loss of or damage to:



- the electricity generating or distribution company, including substations, switching stations and transformer kiosks;  
Loss of profits shall be excluded if the failure is the result of loss or damage to pipes, conduits, mains, power pylons and cables complete with all fittings which are situated between the supplying utility company and the *risk object* specified in the schedule.
- supply, compressor, measuring, control, mixing, delivery or reducing stations employed by the gas production or gas distribution company, or the pipes, valves or reducing cabinets between the aforementioned stations and the business of the *insured*;
- the waterworks, including pumping stations and intermediate stations;

due to an insured peril/event, provided that the business interruption lasts longer than six consecutive hours.

## 2.4 EXCLUSIONS:

### 2.4.1 WAR RISK

The insurance shall not cover loss of profits caused by or arising from acts of war:

- armed conflict: any situation in which states or other commensurable parties combat each other, or the one the other, with the use of military force;  
armed conflict shall be deemed to include armed action by military units under the responsibility of international organisations such as the United Nations, the North Atlantic Treaty Organisation or the Western European Union;
- civil war: a more or less organised armed struggle between inhabitants of the same state in which a significant portion of the inhabitants of that state are involved;
- insurrection: organised violent resistance within a state directed against the public authorities;
- civil commotion: more or less organised violent acts occurring in different places within a state;
- riots: a more or less organised local violent movement directed against the public authorities;
- mutiny: a more or less organised violent movement of members of any armed force directed against the authority under which they resort.

### 2.4.2 NUCLEAR REACTIONS

The insurance shall not cover loss of profits caused by, manifesting itself during or arising from nuclear reaction, irrespective of how the reaction has arisen. Nuclear reactions shall be understood to mean any nuclear reaction in which energy is released such as nuclear fusion, nuclear fission, artificial and natural radioactivity.

The exclusion in respect of nuclear reactions shall not apply to radioactive nuclides existing outside a nuclear facility which are used or designated to be used for industrial, commercial, agricultural, medical or scientific purposes, with the proviso that the required licence(s) pertaining to the manufacture, use, storage and disposal of radioactive substances must have been issued by the government. The exclusion shall remain in force insofar as a third party is liable for the incurred loss or damage pursuant to the law.

'Law' shall be understood to mean the Nuclear Accidents Liability Act [*Wet Aansprakelijkheid Kernongevallen*] (Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands, 1979-225) [*Staatsblad, 1979-225*], being the special statutory regulation of liability with regard to nuclear energy.

'Nuclear facility' shall be understood to mean a nuclear facility within the meaning of said Act.

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#### 2.4.3 EARTHQUAKE, VOLCANIC ERUPTION

The insurance shall not cover loss of profits caused by earthquake or volcanic eruption. In the event of loss or damage arisen either during the period in which or during a period of 24 hours after the consequences of an earthquake or volcanic eruption have manifested themselves in or near the *risk objects*, the burden of proving that the loss or damage is not attributable to those phenomena shall be upon the *insured*.

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#### 2.4.4 FLOOD

The insurance shall not cover loss of profits caused by flooding as a result of the failure or overflowing of dikes, quays, sluices, banks or other water-retaining structures, regardless whether said flooding was caused by a storm.

This exclusion shall not apply to fire or explosion caused by flooding.

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#### 2.4.5 LOSS OF PROFITS NOT RELATED TO THE EVENT

The insurance shall not cover loss of profits which would also have arisen had the loss of or damage to the *risk object* due to an insured peril/event not occurred.

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#### 2.4.6 PENALTIES

The insurance shall not cover loss of profits as a result of penalties due to breach of contract or the failure to perform any assignment or the failure to perform any assignment at the time required.

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#### 2.4.7 BAD DEBT LOSSES

The insurance shall not cover loss of profits as a result of bad debt losses.

### ARTICLE 3 COVER IN THE VICINITY OF THE BUILDING AND ELSEWHERE WITHIN EUROPE

- 3.1 This insurance shall also cover (with respect to articles 3.1.3 up to and including 3.1.5 up to and not exceeding the limits of indemnity stated elsewhere in the policy) loss of profits as a result of loss of or damage to machinery/equipment and/or goods caused by an insured peril/event insofar as said property is located:
- 3.1.1 under shelters, under coverings or on the grounds near the buildings at the addresses specified in the schedule, with the exception of storm, water, steam, precipitation, hail and snow.
  - 3.1.2 in freestanding display cases, freestanding shop windows or dispensing machines near the buildings at the addresses specified in the schedule, with the exception of strike, riots or disturbances.
  - 3.1.3 in Portakabins or containers near the buildings at the addresses specified in the schedule or at locations within *Europe* which are not specified in the schedule.

The insurance shall not cover any loss of profits which:

- is covered by or would but for the existence of the cover provided by this article be covered by another policy for the benefit of the *insured*;
- is caused during transport.

Transport shall be deemed to include loading and unloading as well as the presence of the insured *risk objects* in the means of transport, irrespective of its location.

3.1.4 in buildings at locations within *Europe* which are not specified in the schedule.

Loss of profits which is covered by or would but for the existence of the cover provided by this article be covered by another policy for the benefit of the *insured* shall be excluded.

3.1.5 outside buildings at locations within *Europe* which are not specified in the schedule, with the exception of storm, water, steam, precipitation, hail, snow, crash, collision, and fallen off or poured out cargo as a result thereof, strike, riots or disturbances.

The insurance shall not cover any loss of profits which:

- is covered by or would but for the existence of the cover provided by this article be covered by another policy for the benefit of the *insured*;
- is caused during transport.

Transport shall be deemed to include loading and unloading as well as the presence of the insured *risk objects* in the means of transport, irrespective of its location.

3.2 Loss of profits due to loss of or damage to property of third parties as a result whereof said third parties cease to purchase or purchase less from the *insured* (buyer's risk) shall be excluded.

## ARTICLE 4 INDEMNITY IN EXCESS OF THE SUM INSURED

The *insured* shall in the event of loss of profits due to an insured peril/event be entitled to indemnity under this insurance and in excess of the sum insured up to and not exceeding the limits of indemnity stated elsewhere in the policy, of:

4.1 *Salvage costs*;

4.2 The *reconstruction costs* which are incurred as a result of loss of or damage to administrative and financial data, drawings, etc. which are at the location specified in the schedule, due to an insured peril/event.

4.3 Claim settlement commission, the amount charged by the broker upon payment of indemnity.

## ARTICLE 5 INCREASE IN COST

- 5.1 The increase in cost shall be reimbursed up to but not exceeding the amount of the reduction of the loss of profits which has been realised within the indemnity period by the increase in cost.
- 5.2 The increase in cost which has been incurred with the consent of (the claims assessor of) the insurers shall be reimbursed in full, if necessary in excess of the sum insured.

## ARTICLE 6 KNOWLEDGE OF LOCATION(S) AND CHANGE IN RISK

- 6.1 The description of the business stated in the schedule shall be deemed to have been provided by the insured.
- 6.2 Insurers have knowledge of the location, construction, lay-out and use of the risk objects, as well as of the adjacent premises, upon inception of the contract.
- 6.3 With regard to the risk objects, the insured shall be free to carry out annexes, renovations, replacements, extensions, demolitions, internal rearrangements and other alterations, all this within the limits of the description stated in the schedule.

## ARTICLE 7 NOTIFICATION OF CLAIM AND CLAIM ASSESSMENT

### 7.1 NOTIFICATION

The insured shall be obliged to notify the insurers as soon as is reasonably possible of any occurrence which may give rise to a liability to pay indemnity on the part of the insurers.

### 7.2 APPOINTMENT OF CLAIMS ASSESSORS

- 7.2.1 The exclusive proof of the extent of the loss shall be an assessment made by an assessor to be appointed jointly or by two assessors, of whom the insured and the insurers each appoint one. In the latter instance, the two assessors shall jointly appoint a third assessor prior to commencing their duties. In case of a failure to reach an agreement said third assessor shall, after having consulted both assessors or having duly summoned them, assess the extent of the loss in accordance with the policy conditions and within the limits of both assessments.

The assessors shall have the right, either jointly or individually, to call in the assistance of experts.

- 7.2.2 The appointment of assessor(s) and acceptance of the assignment shall be substantiated by a deed to be signed by the insured and the assessor(s); a specimen of this deed has been filed by the Netherlands Insurance Exchange Association with the court registry of the Amsterdam District Court.

- 7.2.3 Should any appointment fail to be effected due to a failure to act or a failure to reach an agreement, an appointment made at the request of any interested party by the President of the Chamber of Commerce of Amsterdam or Rotterdam shall be binding upon both parties.

The party who initiated the aforementioned request shall notify the other party accordingly.

- 7.2.4 Cooperation in the above proceedings shall not imply an admission of liability to pay indemnity on the part of the insurers.

### 7.3 COOPERATION

The insured and the insurers shall be obliged to do and concur in doing all such things as may be deemed necessary by the assessors for the correct performance of their task, which includes producing the policy and any other administrative data for examination, as well as furnishing information with regard to cause, circumstances and extent of the loss.

### 7.4 FEES AND EXPENSES

Assessors' and experts' fees and expenses shall be entirely for the account of the insurers. Should, however, the total amount of the expense claims of the assessor(s) appointed by the insured and the expert(s) consulted by them exceed the corresponding total amount on the part of the insurers, then the surplus shall be for the account of the insured.

## ARTICLE 8 LOSS AND EXTENT OF THE INDEMNITY

8.1 The *insurers'* liability to pay indemnity shall comprise:

8.1.1 loss of profits;

8.1.2 the amount of the indemnity in excess of the sum insured in accordance with article 4;

8.1.3 the amount in accordance with article 5 (*increase in cost*);

8.2 The *indemnity period* shall be limited to 13 weeks if:

- following an event the business operations affected thereby are not continued;
- within 13 weeks following the event no efforts were made to resume the business operations.

However, if the *insured* is obliged by virtue of statutory provisions or the terms of a contract to continue paying remunerations and the social security charges related thereto, an *indemnity period* limit of 26 weeks shall be adhered to in this respect, unless the *indemnity period* stipulated in the schedule is shorter.

8.3 Proportionality provision

8.3.1 Indemnity shall only be payable proportionally if the sum insured – if applicable with due observance of the increase/decrease arrangement incorporated elsewhere in the policy – is less than the *gross profit* which would have been realised had the loss of profits not arisen.

8.3.2 The proportionality provision shall not be applicable to any indemnity payable by virtue of articles 4.1 (*reconstruction costs*) and 5.2 (*increase in cost*).

8.4 Any indemnity due shall be paid by the *insurers* within 4 weeks following receipt of all relevant information. The *insurers* shall not be in default until 4 weeks have elapsed since receipt thereof.

- 8.5 If any *insured* party has failed to comply with or perform any obligation incorporated in the policy in the manner required, the *insurers* shall be entitled to reduce the payment of indemnity by the loss they sustain as a result thereof.
- 8.6 In the event of a refusal of a claim to indemnity, the legal claim shall become prescribed by the lapse of twelve months.
- 8.7 Contrary to Section 962, subsection 3, second sentence of Book 7 of the Netherlands Civil Code, the *insurers* shall not seek recourse against the *policyholder* and/or the *insured*, unless the *policyholder* and/or the *insured* has/have caused the loss or damage by a wilful act within the meaning of the insurance under consideration.

## ARTICLE 9 LIMITATION OF LEGAL CLAIM

Any legal claim against the *insurers* to pay indemnity shall become prescribed by the lapse of three years after the start of the day following the one on which the *insured* first had knowledge of the exigibility thereof.

## ARTICLE 10 OTHER POLICIES

- 10.1 The *insured* shall be obliged to produce a statement of all other policies known to him which provided cover against loss of profits or any element thereof at the time of the event.
- 10.2 If the loss of profits is also covered under any insurance specifically taken out for that purpose, said specific insurance shall take precedence at all times. 'An insurance specifically taken out' shall be understood to mean: loss of profits following electronics breakdown insurance, loss of profits following machinery breakdown insurance, loss of profits following construction all risks insurance, advanced loss of profits insurance, reconstruction costs insurance, loss of rent insurance.

## ARTICLE 11 TRANSFER OF *REAL INTEREST*

- 11.1 Upon transfer of the *real interest* due to death, both the new *insured* and the *insurers* shall be entitled to cancel the contract within three months after they were informed of such transfer, with due observance of two months' notice.
- 11.2 Upon transfer of the *real interest* otherwise than due to death, the contract shall expire after a period of 30 days, unless the new *insured* has advised the *insurers* within said period that he wishes to take over the policy. In that case, the *insurers* shall be entitled to cancel the contract within 30 days following the receipt of said notification, with due observance of at least 8 days' notice.
- 11.3 The provisions of article 11 shall not result in renewal of the insurance contract or any restriction of the right to cancellation on any other account.
- 11.4 Any change in business name or legal form, the participation in, the resignation from or the transfer of shares in a company, partnership or joint ownership shall not be deemed to be a transfer of the *real interest*.

## ARTICLE 12 PAYMENT OF PREMIUM AND INDEMNITY

### 12.1 DEFINITIONS

#### 12.1.1 PREMIUM

For the application of this article, 'premium' shall be deemed to include any other amounts due in connection with this policy.

#### 12.1.2 INSURED

For the application of this article, '*insured*' shall be deemed to include the *policyholder* as well as any other party who owes the premium.

### 12.2 PAYMENT OF PREMIUM

- 12.2.1 The broker shall undertake to pay the premium to the *insurers* as if the broker were indebted at the moment the premium falls due from the *insured* by virtue of this insurance contract. Unless otherwise expressly agreed, the broker shall pay the premium by crediting the current account of the *insurers* for the premium due from the *insured* by virtue of the insurance contract, at which point the *insured* shall be discharged towards the *insurers*.
- 12.2.2 The *insured* shall be obliged to pay the premium to the broker. In the event that the insurance contract was concluded through a second intermediary and the *insured* has paid said second intermediary, the *insured* shall not be discharged towards the broker by said payment until the second intermediary has paid the premium to the broker.
- 12.2.3 Without prejudice to the obligation of the *insured* to pay the premium due to the broker, this policy shall only be effective for the period for which the premium has been paid to the broker as well as for the period for which the broker has granted credit to the *insured*. This shall be interpreted to mean that the *insured* shall be deemed to have been granted credit, unless he has been notified in writing that it was revoked.
- 12.2.4 Upon acceptance of the policy the broker shall be deemed to have been irrevocably authorised by the *insured* to prematurely discharge the *insurers* from their obligations under the insurance contract if the *insured* or, if the insurance contract was concluded through a second intermediary, said second intermediary fails to pay the premium to the broker. The broker shall not discharge the *insurers* from their obligations without prior written notice of such intention to the *insured*.

### 12.3 PAYMENT OF INDEMNITY AND RETURN OF PREMIUM

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

The *insurers* shall thereby be discharged as soon as the payment of indemnity has been received by the party entitled thereto or otherwise has been settled with said party in accordance with the law or any existing arrangement between him and the broker.

If the *insurers* have paid the damages to the broker and the broker defaults on payment thereof to the party entitled, the *insurers* shall 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 shall 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.

- 12.3.2 The broker shall pay any indemnity and return of premium to the party entitled thereto. However, the broker shall only be liable to pay the balance that remains after said 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 shall 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 229 of Book 3 of the Netherlands Civil Code, or a benefit as referred to in Section 283 of Book 3 of the Netherlands Civil Code, as well as in case of a non-compulsory insurance against liability, the settlement shall not extend beyond that which is payable by the *policyholder* in respect of the insurance under which the payment is made.

## ARTICLE 13 ACTS BY *INSURERS*

- 13.1 Any act to which *insurers* are entitled or duly bound may be performed by them either collectively or individually.
- 13.2 The manner in which an *insurer* uses his powers or meets his obligations shall not affect the legal status of the *co-insurers*.
- 13.3 The *insurers* indicated by an \* in the schedule hereby authorise the *insurers* indicated by a number to sign the documents referred to in the regulation on Administrative Signing of Policy Documents [*regeling Administratieve Ondertekening Polisdocumenten*] of the Netherlands Insurance Exchange Association, also on their behalf.

## ARTICLE 14 NOTICES AND COMMUNICATIONS

- 14.1 All notices and communications from the *insurers* and the *insured* intended for each other shall be deemed to have been duly made when directed to the broker.
- 14.2 All notices and communications from the broker directed to the *insured* named in the schedule at his last-known address shall be deemed to have been duly made.



## ARTICLE 15 INCEPTION AND EXPIRY OF THE CONTRACT

- 15.1 Inception and expiry of the contract shall both be at 12.00 local time at the location of the insured *risk objects*.
- 15.2 If the contract has not been cancelled in writing by the *insured* or (any of) the *insurer(s)* at least two months prior to the contract expiry date, it shall be tacitly renewed for the period most recently agreed upon, but for twelve months at most.

## ARTICLE 16 DISCLOSURE OBLIGATION

- 16.1 The provisions of Section 928, subsection 2 of Book 7 of the Netherlands Civil Code shall not apply to the disclosure obligation of the *policyholder* upon taking out the insurance contract under consideration.
- 16.2 Re-placement of a share, in whole or in part, of any *insurer* shall not result in any new right of the underwriting *insurer* with respect to the disclosure obligation of the *insured*. However, the rights of the original *insurer* in that respect shall be transferred in full to the underwriting *insurer*.

## ARTICLE 17 PARTICIPATION

If *insurers* participate in the insurance through the intermediary of an authorised underwriting agent acting on their behalf and said agent makes use of fixed quota shares as filed with the Netherlands Insurance Exchange Association, then they shall be deemed to have underwritten the shares of the *insurers* according to the quota shares in question.

At the request of the *insured*, the broker or the Netherlands Insurance Exchange Association shall furnish an overview of the *insurers* and their shares.

## ARTICLE 18 APPLICABLE LAW

This policy shall be governed by and construed in accordance with the laws of the Netherlands.

## ARTICLE 19 DISPUTES

All disputes concerning this contract shall be subject to the jurisdiction of the competent court in Amsterdam or Rotterdam.

## ARTICLE 20 DEPOSIT

In case of any difference between the wording of these conditions and the 'Standard Dutch Bourse Conditions for Comprehensive Loss of Profits Insurance 2006' [*Nederlandse Beursvoorwaarden voor Bedrijfsschadeverzekering - Uitgebreide Gevaren (NBBU 2006)*] which was filed on 7<sup>th</sup> December 2005 with the Netherlands Insurance Exchange Association, the provisions of the latter shall prevail.

The wording of the Standard Dutch Bourse Conditions for Comprehensive Loss of Profits Insurance 2006 is available via the website of the Netherlands Insurance Exchange Association, [www.vnab.nl](http://www.vnab.nl).

*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: 'Standard Dutch Bourse Conditions for Comprehensive Loss of Profits Insurance (2006)'.*