

DTV Cargo Insurance Conditions 2000/2011

(DTV Cargo 2000/2011)

All Risks

Sample terms and conditions of the GDV

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1 Interest / subject matter of the insurance

1.1 Insurable interest

1.1.1 The subject matter of the cargo insurance can be any monetary interest a person has in seeing that the goods survive the perils of transport and associated storage.

1.1.2 Covered are the goods specified in the insurance policy and/or other expenses and costs.

1.1.3 Besides the goods, other insurable interests can also include

- anticipated profit,
- increased value,
- duty,
- freight,
- taxes and charges
- other costs.

1.1.4 The Insured can insure his own interest (insurance for own account) or that of another (insurance for third-party account). See No. 13 for further details.

1.2 Notwithstanding other provisions of the insurance contract, cover shall be granted only insofar as and as long as not in contradiction to economic, trade or financial sanctions or embargoes enacted by the European Union or the Federal Republic of Ger-

many that are directly applicable to the contracting parties.

This shall also apply to economic, trade or financial sanctions or embargoes enacted by the United States of America with regard of the Islamic Republic of Iran, insofar as those are not in contradiction to European or German legislative provisions.

2 Scope of cover

2.1 Perils and losses/damages

The Insurer covers all risks to which the goods are subject for the duration of the insurance.

Irrespective of percentage, the Insurer makes good loss of or damage to the insured goods arising from an insured peril.

2.2 Special cases

2.2.1 Pre-carriage goods or returned goods

Pre-carriage goods or returned goods are covered under the same conditions as other goods. This does not affect the Insured's obligation to prove that the damage occurred during the insured transport.

2.2.2 Damaged goods

If the goods are already damaged at the inception of

the policy, the Insurer makes good the loss or damage only if the existing damage did not have any influence on the damage that occurred during the insured period.

2.3 Insured expenses and costs

2.3.1 The Insurer also indemnifies:

2.3.1.1 General Average contributions (G.A.) based on an adjustment drawn up in accordance with the law, the York-Antwerp Rules, the Rhine Rules (IVR), or any other internationally recognised G.A. rules, provided that the measure was intended to avert an insured loss/damage. If the contributory value exceeds the insured value and the latter equals the sum insured, the Insurer indemnifies to the limit of the sum insured. Provisions relating to under insurance as well as the conditions under No. 2.3.3 are unaffected by the above.

Within the scope of these provisions, the Insurer undertakes to reject claims made against the Insured for compensation and expenses arising from the Both to Blame Collision Clause;

2.3.1.2 expenses for averting, minimising and ascertaining the scale or extent of damage, such as

2.3.1.2.1 expenses reasonably incurred in averting or minimising an insured loss when that loss/damage has occurred (loss event) or is directly threatening;

2.3.1.2.2 expenses incurred by the Insured on the instruction of the Insurer when an insured loss/damage has occurred;

2.3.1.2.3 costs properly and reasonably incurred in assessing or determining the insured loss/damage, as well as costs incurred by a third party appointed to perform this task on instruction of the Insurer;

2.3.1.3 costs properly and reasonably incurred in transhipping, temporarily storing and forwarding the goods after an insured event or an insured accident involving the means of transport has occurred, insofar as they were incurred on instruction of the Insurer and are not already covered under No. 2.3.1.2.

2.3.2 The Insurer bears the expenses and costs as per Nos. 2.3.1.2.1 and 2.3.1.2.2 even if the measures undertaken were unsuccessful.

2.3.3 Expenses and costs as per Nos. 2.3.1.1 and 2.3.1.2 are reimbursed even if, together with other payments, they exceed the sum insured.

2.3.4 The Insured may request the Insurer to assume contributions to general average via guarantee, advance him such contributions, as well as advance the amount required to avert, minimise or ascertain the size of a loss.

2.4 Perils not covered

2.4.1 Cover is not provided for the following perils:

2.4.1.1 war, civil war or similar hostilities as well as perils which - whether war be declared or not - arise out of the hostile use of weapons of war and from the existence of derelict weapons of war as a result of one of these perils;

2.4.1.2 strikes, lock-outs, industrial unrest, acts of violence by terrorist or political groups - regardless of the number of people involved - riots and other civil commotions;

2.4.1.3 confiscation, deprivation of possession or other acts of authorities;

2.4.1.4 the use of chemical, biological, biochemical substances or electromagnetic waves as weapons which constitute a public danger, irrespective of other contributory causes;

2.4.1.5 nuclear energy or other ionising radiation;

2.4.1.6 insolvency or financial default of the shipowner, charterer or operator, or in respect of any other financial dispute involving the above parties, unless:

- the Insured can prove that he exercised the diligence of a prudent businessman in choosing the above parties or the responsible forwarding agent;

- the Insured or Assured is the buyer and, under the terms of the sales contract, had no control over the choice of persons involved in the transport of the goods.

2.4.2 The risks covered under Nos. 2.4.1.1 - 2.4.1.3 and 2.4.1.5 can be insured additionally within the scope of the respective DTV clauses.

2.5 Exclusions

2.5.1 The Insurer is not liable for losses/damages arising from

2.5.1.1 a delay in the transport;

2.5.1.2 inherent vice or the nature of the goods;

2.5.1.3 customary differences or losses in number, weight or measure of the goods. If a deductible has been agreed, however, such differences or losses are regarded as covered;

2.5.1.4 ordinary humidity or fluctuations in temperature;

2.5.1.5 inappropriate and inadequate packaging or incorrect stowage insofar as the Insured acted wilfully or with gross negligence.

2.5.2 The Insurer is not liable for indirect loss/damage in whatever form.

2.6 Causation

In the event of a loss/damage which, under the circumstances, could also have been caused by a non-insured risk (see Nos. 2.4.1.1 - 2.4.1.3, and No. 2.4.1.6) or peril (see Nos. 2.5.1.1 - 2.5.1.5), the Insurer is obliged to indemnify if the loss or damage was, in all probability, caused by an insured peril.

3 Faults of the Insured

The Insurer is not obliged to indemnify if the insured event is caused by a wilful or grossly negligent act of the Insured.

4 Insured's duty of disclosure before inception

4.1 Before inception of the policy, the Insured is obliged to disclose all material facts and circumstances, and to answer completely and truthfully all questions posed by the Insurer. A material fact is a circumstance that would influence the Insurer in accepting, declining or rating the insurance. In case of doubt, a material fact is understood as one that the Insurer has queried expressly or in writing.

If a representative appointed by the Insured concludes the policy and the former is aware of a material fact, the Insured shall be deemed to have been

- aware of said material fact himself.
- 4.2 The Insurer is not obliged to indemnify if incomplete or inaccurate information is disclosed.
- This also applies if information was not disclosed on account of the Insured's ignorance of the fact and this was due to gross negligence on his part.
- If the loss event has already occurred, the Insurer may not refuse cover if the Insured can prove that the incomplete or inaccurate information disclosed influenced neither the loss event occurring nor the size or scale of the payment obligation.
- If the Insurer refuses to indemnify the Insured, the latter may cancel the policy. This right to cancel the policy lapses if the Insured fails to exercise it within one month of receiving notification of the Insurer's decision to refuse indemnification.
- 4.3 The Insurer shall be obliged to indemnify if he was aware of the material facts or that such facts had been inaccurately disclosed.
- The same applies if the Insured can prove that neither he nor his representative was responsible for the incomplete or inaccurate disclosure of the information.
- If the Insurer requested the Insured to disclose material facts in writing, and the latter failed to disclose a circumstance that was not queried expressly by the Insurer, the latter is exempt from liability only if it can be proved that the Insured, or his representative, concealed the information with intent to deceive.
- 4.4 If the Insurer is obliged to indemnify in the absence of fault on the part of the Insured or his representative, the Insurer is due an additional premium to be agreed on commensurate with the aggravated risk. The same applies if neither contracting party was aware of a material fact prior to conclusion of the policy.
- 4.5 The right of the Insurer to avoid the contract for fraudulent misrepresentation of material facts remains unaffected.
- 5 Alteration of risk**
- 5.1 The Insured may change the risk, in particular aggravate it, as well as allow change by a third party.
- 5.2 If the Insured alters the risk or becomes aware of a change of risk, he shall inform the Insurer without delay.
- 5.3 A change of risk is said to exist in particular when
- the commencement or end of the insured transport is subject to considerable delay;
 - there is a major deviation from the specified or customary transport route;
 - the destination port or airport is changed;
 - the goods are stowed on deck.
- 5.4 The Insurer is not obliged to indemnify if the Insured fails to disclose an aggravation of risk, provided that the failure to disclose was neither a wilful nor grossly negligent act and influenced neither occurrence of the loss event nor the amount payable by the Insurer.
- 5.5 The Insurer is due an additional premium commensurate with the aggravated risk, unless the aggravation was in the Insurer's own interest or on humanitarian grounds, or was caused by an insured event that posed a threat to the goods.
- 5.6 The Insurer is not entitled to cancel the policy on the grounds of a change of risk.
- 6 Alteration or abandonment of conveyance**
- 6.1 The Insurer is not obliged to indemnify if the goods are shipped via a means of transport other than the one named in the policy, or are discharged despite direct transport having been stipulated. The same applies if a specific means of transport or specific route were named in the policy.
- 6.2 The Insurer's obligation to indemnify remains unaffected if, after inception of the policy, the transport is altered or abandoned as a consequence of an insured event or without the consent of the Insured. The provisions governing alteration of risk apply correspondingly.
- 7 Obligations prior to occurrence of loss**
- 7.1 Means of transport
- If a specific means of transport with which to convey the goods was not agreed, the Insured shall - insofar as he is able to exercise any influence on the choice of such means - employ means of transport which are suitable for stowing and transporting the goods.
- Furthermore, ocean-going vessels are considered suitable only if they meet the conditions of the DTV's Classification and Age Clause and, where required, are certified according to the International Safety Management Code (ISM Code), or if the shipowner is in possession of a valid Document of Compliance (DoC), as required by the 1974 SOLAS Convention and supplements.
- 7.2 Legal consequences of a breach of obligations
- If the Insured breaches this or any other contractually agreed obligation by way of a deliberate or grossly negligent act, the Insurer will not be obliged to indemnify unless the breach was not deemed to be the cause of the insured event or had no bearing on the scope of the indemnification.
- If unsuitable means of transport are employed, the goods will still be covered if the Insured was unable to exercise any influence on the choice of such means, or he exercised the diligence of a prudent businessman when choosing the carrier or forwarding agent. Should the Insured become aware of the unsuitability of a means of transport, he shall notify the Insurer immediately and pay a reasonable additional premium to be agreed with the Insurer.
- 8 Policy duration**
- The policy provides cover from warehouse to warehouse, and
- 8.1 commences the moment the goods are removed - for immediate transport - from the place of storage.
- 8.2 Depending on which occurs first, the cover terminates
- 8.2.1 the moment the goods arrive at the place of final delivery stipulated by the consignee;
- 8.2.2 the moment the goods are forwarded after discharge at the port or airport of destination to a place

of delivery not named in the policy if this change aggravates the risk;

8.2.3 on expiry of days after the goods have been discharged from the ocean-going vessel or aeroplane at the port or airport of destination. Provided the Insured's own interest is involved, the policy will not terminate at the end of the period agreed - following discharge of the goods from the ocean-going vessel or aeroplane at the port or airport of destination - an insured peril delayed the insured voyage and the Insured reported the delay immediately. The Insurer is due a reasonable additional premium that is to be agreed;

8.2.4 if the goods are transported as per Incoterms FOB or CFR when stowed on board an ocean-going vessel;

8.2.5 if the goods are sold when an insured peril has occurred and when risk is passed;

8.2.6 upon expiry of the period agreed in No. 9.1 when goods are temporarily stored by order of the Insured.

9 Storage

9.1 If the goods need to be stored during the duration of the policy, cover is limited to days per storage period.

9.2 For storage in the ordinary course of transit not by order of the Insured, cover extends beyond the period agreed in No. 9.1 above only if the Insured can prove that he had no knowledge of the storage period being exceeded or could not, according to sound commercial principles, influence the duration of storage.

The Insured shall notify the Insurer immediately upon becoming aware of the storage period having been exceeded. The Insurer is due a reasonable additional premium to be agreed.

If the goods are transported by sea or air, No. 8.2.3 applies on a supplementary basis.

9.3 The periods of storage stated in Nos. 9.1 - 9.2 include the day of arrival and the day of departure.

10 Sum insured; insured value

10.1 The sum insured should correspond to the insured value of the goods.

10.2 The insured value is the fair market value of the goods or, failing that, their market value at the place of departure at commencement of cover plus the cost of insurance, the costs incurred until the goods are delivered to the carrier, and the freight ultimately paid.

10.3 Interests as per No. 1.1.3 are covered by special arrangement only, and only if they are part of the sum insured or correspond to the insured value of the goods. They include anticipated profit for the buyer of 10 % of the insured value.

10.4 The provisions contained in No. 10.1 can be applied correspondingly to the separate insurance of other interests. No. 10.2 applies, in particular, to the insurance of increased value.

10.5 If the insured value has been fixed at an agreed value, the latter determines the insured value. The Insurer is, however, entitled to demand that the

agreed value be lowered if it exceeds the real insured value by a substantial amount. If the sum insured is less than the agreed value, the Insurer shall indemnify - even when the agreed value has been lowered - only in the proportion the sum insured bears to the agreed value.

This provision applies accordingly to the insurance of other insurable interests.

11 Policy

11.1 At the Insured's request, the Insurer is obliged to issue a signed certificate documenting the insurance contract (policy).

11.2 If a policy has been issued, the Insurer is not obliged to indemnify until presented with this policy. The payment to the holder of the policy discharges the Insurer from further liability.

11.3 If the policy is lost or destroyed, the Insurer is obliged to indemnify once the policy has been declared invalid, or security has been given; security by way of a guarantee is excluded. The same applies to the Insurer's obligation to issue a replacement policy, the cost of which is borne by the Insured.

11.4 The contents of the policy are regarded as approved by the Insured - without the legal consequences needing to be advised - if they are not contested immediately upon issue. The right of the Insured to contest such approval on account of an error remains unaffected.

12 Premium

12.1 The premium plus additional costs and insurance tax are due immediately upon conclusion of the insurance contract.

12.2 Payment is considered made in good time if it is effected immediately upon receipt of the insurance policy and/or the invoice.

12.3 If the Insured is responsible for not making the payment in good time, he will be regarded as having defaulted the moment he receives a written reminder. The Insurer makes a written request for the payment and sets a deadline for payment of at least two weeks.

12.4 If the Insured is still in default after the two weeks have passed, the Insurer is released of his obligation to indemnify any insured event which occurs before the payment is made.

The Insurer may cancel the insurance contract without notice if the Insured is still in default after a further two weeks. The Insurer is nevertheless entitled to payment of the agreed premium.

The Insurer is not entitled to invoke the legal provisions contained in this section of the conditions until he has notified the Insured in writing.

13 Insurance for account of another (to whom it may concern)

13.1 The Insured may conclude the insurance policy in his own name on behalf of another with or without having to name the Assured in person (insurance for account of another).

If insurance is taken out for account of another and the latter is named in person, it is assumed that the

contracting party is acting not as a representative, but in his own name for account of another.

In the case of an insurance contract concluded "to whom it may concern" or if the contract leaves open the account for which the insurance cover is to apply, the provisions for insurance for account of another apply if it emerges that the interest of another is being insured.

- 13.2 The Assured is entitled to exercise his rights under the contract. However, only the Insured is entitled to request that the policy be handed over.

Without the Insured consent, the Assured is not entitled to exercise his rights under the contract and to enforce these rights in a court of law unless he is in possession of the policy.

- 13.3 The Insured is entitled to exercise in his own name the contractual rights due to the Assured.

If a policy has been issued, the Insured is not entitled to accept a payment and transfer the rights of the Assured unless he is in possession of the policy.

The Insurer is not obliged to indemnify the Insured unless the latter can prove that the Assured has given his approval to the insurance.

- 13.4 The Insured is not obliged to surrender the policy to the Assured or - in the case of insolvency of the latter - to the receiver before he has been satisfied for claims he has on the Assured in respect of the subject matter insured. He is entitled to satisfy himself for such claims out of the insurance claim against the Insurer or out of the collected indemnity.

- 13.5 The Insurer may set off any claim he has on the Insured who effected the insurance against an insurance claim in so far as the Insurer's claim results from the insurance taken out by the Insured for the Assured.

- 13.6 The knowledge and conduct of the Assured is considered to be equivalent to the knowledge and conduct of the Insured.

- 13.6.1 Where the insurance was concluded without the knowledge of the Assured, it is of no avail whether or not he knew or ought to have known of the occurrence. The same applies if timely notification of the Insured was either not possible or not feasible under the circumstances.

- 13.6.2 If the Insured concluded the contract without the Assured's consent and failed to notify the Insurer thereof, the Insurer is not obliged to accept a plea of ignorance in a claim against him.

- 13.7 The insurance may not be concluded for the benefit of ocean carriers, carriers, warehouse keepers and forwarding agents.

14 Sale of the insured property

- 14.1 If the Insured sells the insured good, the purchaser shall take the place of the Insured in the rights and duties arising out of the insurance contract for the duration of his ownership.

The vendor and the purchaser shall be jointly and severally liable for the premium for the insurance period in force at the time the transfer took place.

The Insurer shall be required to bear the consequences of the transfer only as of such time as he

becomes aware of it.

- 14.2 If a policy has been issued, joint liability of the buyer for the payment of premiums and ancillary costs no longer apply. Once the policy has been issued, the Insurer cannot claim exemption from obligation to indemnify as per No. 12.4 on account of non-payment of premium unless the buyer knew or ought to have known the reason for this exemption.

- 14.3 If the compensation claim is assigned by way of a pledge, the provision contained in No. 14.2 Para. 2 applies in favour of the pledgee.

- 14.4 The Insurer is not entitled to cancel the policy on the grounds of the sale of the insured goods.

- 14.5 The Insured is not obliged to report the sale of the goods to the Insurer.

- 14.6 The purchaser is entitled to cancel the policy with immediate effect. This right to cancel the policy lapses if the purchaser fails to exercise it within one month of acquiring the goods or, if he was unaware of the existence of the policy, within one month of becoming aware of the policy.

- 14.7 If the policy is cancelled in accordance with No. 14.6 above, the vendor shall pay the premium, the purchaser bears no liability for the premium.

15 Provisions for the loss event

- 15.1 Declaration of loss event

The Insured shall notify the Insurer immediately of any loss/damage.

- 15.2 Averting or minimising the loss/damage

In the event of a loss/damage, the Insured shall avert or minimise the damage as far as possible. He shall observe any instructions of the Insurer and shall request such instructions as far as circumstances allow.

- 15.3 Instructions of the Insurer or the surveyor

- 15.3.1 The Insured shall observe the instructions of the Insurer concerning the loss, consult immediately with the surveyor named in the policy or the insurance certificate in order to assess the damage, and submit the latter's survey report to the Insurer.

- 15.3.2 If there is good reason, the services of the nearest Lloyd's agent may be called upon in place of the surveyor named in the policy.

- 15.4 Disclosure of information

The Insured shall provide the Insurer with all information required to assess the insured loss or the extent of the indemnification due. He is obliged to procure and safeguard all evidence that may be of relevance to the later clarification of events leading up to the loss, or which are necessary for the assertion of claims of recourse.

- 15.5 Legal consequences of a breach of obligations

If the Insured fails, either wilfully or through gross negligence, to meet any of the obligations stated in Nos. 15.2 - 15.4 above, the Insurer is released from his obligation to indemnify without the need to separately explain the legal consequences of such a breach to the Insured. The Insurer shall remain to indemnify provided that the breach of obligation had no influence on the determination of the insured

- event or on the determination or the scale of the indemnity payable by the Insurer.
- 15.6 Right of subrogation
- In the event of a loss, the Insured shall safeguard the right of recourse against third parties who are or might be liable for the loss, as well as assist the Insurer in the recourse proceedings.
- If the insured breaches this duty either wilfully or through gross negligence, the Insurer is released from his obligation to indemnify if he is unable to claim compensation from the third party.
- 16 Lodgement of claims; forfeiture of right to compensation**
- 16.1 The Insured shall claim for an insured loss within fifteen months of termination of the covered risk and, if the means of transport has disappeared presumed lost, before expiry of the period of presumptive loss. The postmark shall evidence adherence to the time limit.
- 16.2 The Insured shall forfeit his right to compensation if the claim is not made in good time.
- 17 Indemnification**
- 17.1 Loss of goods
- If the goods are lost either totally or in part, if they are no longer available and there is no prospect of return, or if - in the opinion of an expert - the original state of the goods has been destroyed, the Insured is entitled to claim the share of the sum insured assigned to the goods minus the value of salvaged goods.
- 17.2 Disappearance
- If both the goods and the means of transport have disappeared, the Insurer indemnifies the Insured for total loss unless it can be assumed with all probability that the loss was caused by an uninsured risk. The means of transport are presumed lost 60 days after the expected date of arrival (30 days for journeys within Europe) and no news has been received by the time the claim is made. If communication links are interrupted owing to war, hostile events, civil war or civil commotion, the time period is extended in accordance with the circumstances up to a maximum of 6 months.
- 17.3 Damage to goods
- 17.3.1 If all or part of the goods are damaged, their fair market value or, failing that, the market value they would have had at the place of discharge had the loss not occurred (sound value) and their damaged value shall be determined. The indemnification due bears the same proportion to the sum insured as the gross damaged value bears to the gross sound value.
- 17.3.2 Immediately upon notification of the facts material to the extent of claim, the Insurer may request the damaged value to be determined by private sale or public auction. In this case, the gross proceeds from the sale take the place of the damaged value. If the conditions of sale require the seller to deliver in advance, the Insurer guarantees the payment of the purchase price, provided he has agreed to the terms of sale.
- 17.4 Repair/replacement
- 17.4.1 In the event of damage to or loss of part of the goods, the Insured may, in lieu of part of the insured value, claim compensation for the necessary costs incurred at the time of loss of repairing or replacing the damaged or lost goods.
- 17.4.2 In the event of damage to or loss of goods that form part of an insured entity, the Insurer indemnifies for total loss if repair or replacement is either impossible or inexpedient. Any residual value is taken into account.
- 17.4.3 The Insurer reimburses without deductible "new for old" the necessary costs at the time the loss was noted of repairing or replacing used machines, devices, equipment, vehicles and their components. If the current value of the above equipment amounts to less than 40 % of its new value, the reimbursement payable shall not exceed the current value.
- 17.5 Underinsurance
- If the sum insured is less than the insured value, the Insurer is liable for the loss and expenses only in the proportion of the insured amount to the insured value.
- 17.6 Sale of goods before termination of the insured transport
- 17.6.1 After inception of the policy, if the transport is abandoned or is not completed for any reason and the Insurer is still obliged to indemnify, the latter is entitled to request the Insured to sell the goods with his assistance by private sale or public auction if the goods could not be forwarded at reasonable cost or within an agreed period of time. If the Insurer requests that the goods be sold, the sale shall take place immediately.
- 17.6.2 In the event of a sale, the Insured can demand reimbursement of the difference between the sum insured and the proceeds from the sale. The same applies if the goods in transit have to be sold as a result of a loss claimed against the Insurer.
- 17.6.3 If the conditions of sale require the seller to pay/deliver in advance, the Insurer guarantees the payment of the purchase price, provided he has agreed to the terms of sale.
- 17.7 Non-materialisation of interest; saved costs
- If an insured interest or anticipated profit, increased value, customs duty or freight or other costs do not materialise when the loss occurs, the corresponding part of the sum insured is ignored when determining the extent of the loss. The same applies to any costs saved on account of a loss event having occurred.
- 17.8 Other recoveries
- Any other recoveries received by the Insured in respect of a loss are set off by the Insurer against the indemnification payable.
- 18 Subrogation**
- 18.1 If the Insured requests payment of the sum insured, the Insurer may decide whether or not the rights to the goods or the title to the insured goods shall transfer to him upon payment of the sum. This right applies only if exercised immediately by the Insurer upon notification of the circumstances of the loss

- event.
- 18.2 If the Insurer elects subrogation, the Insured is obliged to minimise the loss if the Insurer himself is unable to do so. The Insured is obliged to disclose all information required to assert the rights, furnish or make available any probative documents, as well as assist the Insurer in recovering and evaluating the goods. The Insurer bears the relevant costs and advance these upon request. The Insured receives that part of the net proceeds from the sale that exceeds the sum insured.
- 18.3 If the Insurer does not choose subrogation, the Insured pays the Insurer either the fair market value of the recovered goods or the net proceeds from the sale.
- 18.4 Subrogation of claims against a third party and the Insurer's rights to abandonment remain unaffected.
- 19 Abandonment by the Insurer**
- 19.1 The Insurer is, in the event of an insured loss, entitled to discharge himself from all further liabilities by payment of the sum insured.
- 19.2 Notwithstanding any discharge of liability, the Insurer nonetheless remains obliged to indemnify the Insured for costs of averting or minimising the loss or in repairing or replacing the insured object, properly incurred before he was notified of the Insurer's intention to discharge himself from liability by payment of the sum insured. This also includes insured costs, which the Insured has undertaken to pay.
- 19.3 The Insurer's right to discharge himself from liability by payment of the sum insured ceases if the Insured fails to receive notification of this intent within one week of the Insurer becoming aware of the loss event and its direct consequences.
- 19.4 Payment of the sum insured does not earn the Insurer rights to the insured objects.
- 20 Experts' procedure**
- If the cause or extent of the loss is disputed, either party is entitled to request their ascertainment by an expert.
- 20.1 In this case, each party nominates an expert without delay. Upon naming an expert, each party is entitled to request the other in writing to do the same. If the second expert is not named within four weeks of receipt of the written request, the requesting party is entitled to have the expert named by the Chamber of Industry & Commerce (alternatively by the Consulate General of the Federal Republic of Germany) of the district in which the goods are currently located.
- 20.2 Before the survey begins, the two experts appoint a third party as a representative. If the parties cannot agree on a choice of representative, either or both parties can request that the representative be appointed by the Chamber of Industry & Commerce (alternatively by the Consulate General of the Federal Republic of Germany) of the district in which the goods are currently located.
- 20.3 The reports produced by the experts contain all information which, depending on the task at hand, is required to determine the cause of the loss and to assess the extent of the indemnification due.
- 20.4 The experts present each party with their findings simultaneously. If the findings diverge, the Insurer forwards the reports to the representative without delay. The representative then settles the disputed issues within the bounds of the findings made by the experts and present both parties with his decision at the same time.
- 20.5 Each party assumes the costs of his own expert. Each party pays half the costs of the representative. This applies even if the two parties agree mutually on an experts procedure. If the Insurer requested the procedure, he bears the entire costs of the proceedings.
- 20.6 The findings of the experts or of the representative are binding unless it is obvious that they deviate substantially from the facts of the case.
- 20.7 If the experts or the representative are unable or unwilling to produce findings, or if they delay proceedings unduly, different experts shall be appointed.
- 21 Limits of liability**
- 21.1 The Insurer's liability for losses occurring during the duration of the insurance is limited to the sum insured.
- 21.2 No. 21.1 applies equally to any subsequent loss event. If payments have been made to cover repairs or replacement, or expenses and costs as per Nos. 2.3.1.1 and 2.3.1.2 have been incurred, or if the Insured has become obliged to pay expenses of this kind, the sum insured is not reduced by the amount of such payments and obligations.
- 21.3 This does not affect No. 2.3.3 above.
- 22 Due date/payment of indemnity**
- 22.1 The Insurer is obliged to indemnify within two weeks of the final assessment of the loss. If the size of the indemnity payment could not be finalised within a month of the loss being reported, the Insured is entitled to demand part payment of the minimum amount likely under the circumstances.
- 22.2 The date on which the right to part payment arises is deferred by the length of time by which ascertainment of the insured event and the extent of the Insurer's obligation were delayed, if this delay was the fault of the Insured.
- 22.3 Indemnification must be paid in the currency of the sum insured.
- 23 Transfer of claims for loss/damages**
- 23.1 If the Insured is entitled to claim against a third party, these rights transfer to the Insurer upon indemnification of the Insured. The transfer may not be to the detriment of the Insured. In this event, the Insured is obliged to provide the Insurer with the information required to assert these rights, to submit - provided they are in his possession - all certificates documenting the claim, and to submit all papers - certified by a notary public - documenting the transfer of rights. The Insurer shall bear these costs.
- Section 1 applies accordingly in case of general average. However, the Insured's claim to General Average allowance will pass to the Insurer the moment it arises if the latter is liable for sacrifices. If the compensation exceeds the damages and ex-

penses paid by the Insurer, the excess is payable to the Insured.

23.2 The Insurer is discharged of his obligation to indemnify insofar as the Insured is unable to claim against a third party responsible for the transport because his legal liability is limited beyond the customary measure or excluded by contract. This does not apply if the limitation or exclusion was beyond the Insured's control.

23.3 Even after the right of recourse has transferred to the Insurer, the Insured is obliged to minimise the loss, if need be, by withholding payments such as freight. The Insured is obliged to assist the Insurer in asserting the claim and to forward immediately any material information, messages and documents. The Insurer shall bear the costs and make advance payments upon request.

24 Limitation period

24.1 Claims arising from the policy are subject to a limitation period of three years. The limitation period commences at the end of the year in which payment can be requested. In case of general average, the period commences at the end of the year in which the Insured's contribution is asserted by way of a general average adjustment which meets the requirements laid down in No. 2.3.1.1.

24.2 If the Insured has reported a claim to the Insurer, the limitation period is suspended until the Insured has received a decision in writing from the Insurer.

25 Co-insurance

25.1 If several Insurers underwrite a policy, the latter are obliged to indemnify for their respective shares only, i.e. not jointly. This applies even if the single policy or insurance certificate was underwritten by one Insurer on behalf of the others.

25.2 The terms and conditions concluded with the Insured by the leading underwriter are binding for the other Co-insurers. This weighs in favour of the Insured when claims are settled. Without the agreement of each individual Co-insurer, however, the

leading underwriter is not authorised to do any of the following:

- increase the policy limit;
- include the risks excluded under Nos. 2.4.1.1 - 2.4.1.3 (see No. 2.4.2);
- change the policy currency;
- change the terms of cancellation.

In the absence of the consent of the Co-insurers, the leading Underwriter is also liable, by virtue of an unrestricted statement of declaration, for the shares of the Co-insurers.

25.3 The leading underwriter is empowered to litigate on behalf of the Co-insurers. This applies equally to cases brought before courts of law and to those before arbitration tribunals.

However, a verdict against the leading underwriter for his part alone, or a settlement made after litigation or any arbitration award shall be recognised by the Co-insurers as binding for their quotas as well. If the leading Insurer's share falls short of the amount in dispute, the Insured is obliged - on the request of the leading Insurer or one of the participating Insurers - to extend the action to include the second and, where necessary, the third and other Insurers until the sum is reached. If the Insured does not meet this request, Sentence 1 is void.

25.4 The existing leading underwriter shall notify the Co-insurers immediately and in writing of a change in leadership. This disclosure may also be made by the Insured. In this case, each Co-insurer is entitled to cancel his participation in the policy with four weeks' notice. The right to give notice extinguishes if not exercised within one month of the written notification of a change in leadership.

25.5 Disclosures and statements received by the leading underwriter are regarded as having been received by the Co-insurers as well.

26 Final clause (applicable law)

This policy is subject to the laws of the Federal Republic of Germany.