

**Standard Dutch Bourse Conditions**  
for  
**Property Damage and Loss of Profits**  
**Insurance**  
**2006**

**STANDARD DUTCH BOURSE CONDITIONS**  
**for**  
**PROPERTY DAMAGE and LOSS OF PROFITS INSURANCE**  
**2006**

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**STANDARD DUTCH BOURSE CONDITIONS**  
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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 Machinery/equipment**

All moveable property, with the exception of *goods* and private house contents. Motor vehicles with registration numbers, trailers, caravans and vessels shall be included under the policy provided that such has been stated in the schedule.

**1.2 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.

**1.3 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.

**1.4 Effective amount**

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

**1.5 Europe**

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

**1.6 Increase in cost**

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

**1.7 Building**

The immovable property described in the schedule, including all that is designated as and deemed to be part thereof according to commercial practice. Insofar as they are not separately insured, said description shall include all structures which by their nature and design are intended to be permanent fixtures.

The foundations shall be included under the policy provided that such has been stated in the schedule.

**1.8 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.

### **1.9 Goods**

Raw and ancillary materials, semi-finished and finished products, products being processed and packaging.

### **1.10 Reinstatement value**

The amount required for the reconstruction of the insured *building* immediately after occurrence of the insured event at the same site and of equal quality to its original construction and design.

### **1.11 Reinvestment**

The allocation of the indemnity for the repair, (re)construction and/or purchase of property as referred to in articles 1.1 and/or 1.7 in order to continue the business, profession, other activities or the function which are within the scope of the description stated in the schedule.

### **1.12 Tenant's fixtures and fittings**

The costs incurred by the *insured* in his capacity as tenant for the improvement or modification of the rented *building* or the rented space.

### **1.13 Indexation**

Automatic and continuous adjustment of the sum insured to the index agreed upon.

### **1.14 Annual interest**

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

### **1.15 Cost price**

The amount required for the purchase of raw materials increased by the added value.

### **1.16 New replacement value**

The amount required for the acquisition of new property of the same nature and quality.

### **1.17 Debris removal costs**

The costs of demolition, clearance, removal, dumping and destruction of the insured *risk objects* insofar as they are not included in the assessment as referred to in article 9.1.1 and are an inevitable consequence of a loss or damage covered under this policy.

### **1.18 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*.

### **1.19 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.

### **1.20 Demolition value**

The amount that could be obtained for those parts of the *building* which are still useful or valuable, reduced by the costs of demolition, clearance, removal, dumping and destruction.

### **1.21 Variable costs**

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

### **1.22 Market value**

The amount that could be obtained as commercial market value upon sale of the *building*, exclusive of the land, assuming that its purpose would remain unaltered.

### **1.23 Replacement value**

The amount required for the acquisition of property equivalent in type, quality, condition and age.

In the absence of a replacement market, the value adopted shall be the higher of:

- the *new replacement value* after deduction of an amount for technical obsolescence, or
- the *new replacement value* after deduction of an amount for economical obsolescence.

Such with due regard for the state of the property.

#### **1.24 Insurers**

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

#### **1.25 Insured**

The natural person or legal entity named as such in the schedule, subject to the provisions of article 14. The *insured* shall also be deemed to be the *policyholder* unless another party is named as *policyholder* in the schedule.

#### **1.26 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).

#### **1.27 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 or damage as referred to in articles 2.1.1 and 2.1.2 if and insofar as the loss or damage 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.

##### **2.1.1 Property damage**

Loss of or damage to the insured *risk objects* specified in the schedule which is caused by the perils/events mentioned in article 2.2, whether said perils/events are caused by the nature of or any defect in the insured *risk objects* or not.

Loss of or damage to the insured *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.

##### **2.1.2 Loss of profits**

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 article 2.2, 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.

#### **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.

#### **2.2.4 Lightning**

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

#### **2.2.5 Overvoltage/induction**

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

#### **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.

#### **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.

#### **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.

Indemnity shall also be paid for the costs of:

- locating the breakage, fracture or defect in the pipe and the related repairs to walls, floors and other parts of the *building*;
- in the event of bursting due to frost, the repair of damaged pipes, installations and appliances; at least insofar as these costs are for the account of the *insured* and said costs are not covered by any other policy or would have been covered but for the existence of the cover provided by this article.

**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.

The cost of repairing roofs, roof gutters and rainwater drainpipes shall not be covered.

**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. The cost of repairing the aquariums and their contents shall also be covered.

**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.

### **2.2.9 Theft**

Theft of materials belonging to the insured *building*, as well as damage to said *building* as a result thereof and loss of profits arising therefrom, the latter regardless whether the *building* is insured.

### **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, as well as loss of profits arising therefrom, the last-mentioned regardless whether the *risk objects* are insured.

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.

### **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.

### **2.2.12 Extortion and/or robbery**

on condition that it is accompanied by violence or duress.

### **2.2.13 Glass breakage**

The glass itself, with the exception of mirrors and wall decorations, shall not be indemnified.

### **2.2.14 Crash, collision and fallen off or poured out cargo as a result thereof**

Loss of or damage to the vehicle or vessel or the load which caused the loss or damage shall not be covered, nor the loss of profits arising as a result thereof.

### **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.

### **2.2.16 Smoke en soot**

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

### **2.2.17 Breakdown or failure of upright or chest-type refrigerators and freezers**

This cover shall only apply to the contents of such refrigerators and freezers.

### **2.2.18 Collapse of cranes, hydraulic arms, piling frames, windmills, antennas, trees, flagpoles, lighting and transmitting masts and/or dislodgement of parts thereof.**

If the above-mentioned property is insured, loss of or damage to said property shall not be covered, nor the loss of profits arising as a result thereof, unless such loss or damage has been caused by another insured peril/event.

### **2.2.19 Cutting and/or pruning of trees**

### **2.2.20 Corrosive substances**

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

### **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.

### **2.2.22 Riots or disturbances**

Incidental collective manifestations of violence.

### **2.2.23 Meteorites**

### **2.2.24 Landslide**

### **2.2.25 Horses and livestock**

## **2.3 Inaccessibility, failure of 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 of 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 provide cover for property damage or 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 property damage or 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, on 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.

#### **2.4.3 Earthquake, volcanic eruption**

The insurance shall not cover property damage or 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*.

#### **2.4.4 Flood**

The insurance shall not cover property damage or 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.

#### **2.4.5 Unprocessed precious metals, unset precious stones, money and monetary instruments**

The insurance shall not cover loss of or damage to unprocessed precious metals, unset precious stones, money and monetary instruments, except for the provisions of article 4.8.1.

#### **2.4.6 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.

#### **2.4.7 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.

#### **2.4.8 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 provide 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) for property damage or loss of profits caused by an insured peril/event insofar as the insured *machinery/equipment* and/or *goods* are 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 provide cover for any loss or damage 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 or damage 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 provide cover for any loss or damage 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** This insurance shall also provide cover for loss of or damage to car park installations, car park ticket machines, cameras etc. which are located near the *buildings* at the addresses specified in the schedule, due to an insured peril/event, with the exception of vandalism, strike, riots or disturbances.

**3.3** This insurance shall also provide cover, up to and not exceeding a limit of indemnity stated elsewhere in the policy, for loss of or damage to insured *risk objects* which are located in a locked passenger car within the Benelux, if the perpetrator gained access to the car by forcible entry, and traces thereof have been found on the exterior of the car.

**3.4** This insurance shall also provide cover for loss of or damage to detachable parts of the insured *building* which are temporarily located elsewhere within *Europe*, due to an insured peril/event, if said property is located:

- in *buildings*;
- outside *buildings*. However, 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 provide cover for any loss or damage 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.

**3.5** 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**

If not or not sufficiently insured elsewhere, the *insured* shall in the event of loss or damage 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** *Debris removal costs*;

**4.3** The costs of transport and storage of the insured *risk objects* as a result of the temporary unavailability of the *buildings*;

**4.4** Damage to *buildings* leased by the *insured* in the event of burglary (article 2.2.10) or vandalism (article 2.2.11), at least if and insofar as such damage is for the account of the *insured*.

**4.5** Loss of rent if and insofar as this is not included in the indemnity for loss of profits.

If the *insured* is both owner and occupant of the *building*, the loss of rent shall be determined on the basis of the market rental value of the *building*.

**4.6** Costs which the *insured* is compelled to incur by virtue of statutory provisions or by order of the authorities;

**4.7** Loss of or damage to landscaping and anything included therein, as well as the paving, if and insofar as said loss or damage is for the account of the *insured*.

An exception hereto shall be loss or damage due to storm, unless the loss or damage is caused by the collapse of (parts of) the *building* as a result of the storm;

**4.8** If *machinery/equipment* is insured:

**4.8.1** money and monetary instruments (including cheques, giro payment cards, bank cards, chip cards, etc.) insofar as they are the property of the *insured* and are located in the *buildings* specified in the schedule.

Outside the *buildings* said property shall only be insured against the perils of extortion and robbery;

**4.8.2** the costs of the replacement, adjustment of locks, (computer) cards or any other locking device, if such replacement is the inevitable consequence of theft of keys, access cards etc., regardless whether said theft took place at the insured location or at the home addresses of management board members or authorised staff members;

**4.8.3** the financial loss as a result of receiving payment for *goods* delivered and/or services rendered in the form of counterfeit money, counterfeit monetary instruments, stolen or forged cheques, giro payment cards, or payment by means of stolen or forged bank cards, chip cards, etc.

This cover shall only apply if *machinery/equipment* is insured and insofar as said financial loss is not compensated by a financial institution.

**4.9** 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.

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

#### **Article 5 INCREASE IN COST (loss of profits)**

**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 *risk objects* or 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.

**6.4** If, in relation to what has been stated in the schedule:

- the designated use changes, or
- the insured *risk objects* are (or will be) out of use for a period exceeding three months, or
- the *building* is (or will be) vacant for a period exceeding three months, or
- the *building* is occupied by squatters,

the *insured* shall notify the *insurers* thereof as soon as possible, but at the latest within two months after the *insured* became aware of the change in question.

During a period of two months following the receipt of such notification, the *insurers* shall be allowed to cancel the insurance, with due observance of two months' notice, or to stipulate a change in premium rates and/or conditions. The revised premium and/or conditions shall become effective as of the date of the notification of the *insurers*.

In the latter case, the *insured* shall have the right to cancel the insurance within a period of one month after the revised premium and/or conditions became effective. The insurance shall then expire as of the date of said notification of the *insured*.

If the *insured* fails to notify the *insurers* of the change in risk within the stipulated period, the *insurers* shall be allowed to refuse to continue the insurance or to refuse to continue the insurance on the same conditions if they can make a reasonable case for such action having been taken had they been notified of the change in risk. In that case the following shall apply:

- if the insurance had not been continued, then all right to make a claim shall be forfeited;
- if the insurance had only been continued subject to revised premium rates and/or conditions, then any loss or damage shall be indemnified in the proportion which the premium set before the change in risk bears to such higher premium, insofar as cover would have been provided under such amended conditions.

#### **Article 7 PRELIMINARY VALUATION**

**7.1** If the schedule shows that the insured *risk objects* have been valued by (an) expert(s), this preliminary valuation shall remain valid for a period of 3 years counting from the date of the valuer's report. The valuer's report shall be deemed to form part of the insurance contract. If the *insurers* demonstrate that it is fraudulent, the expert's valuation shall become invalid.

**7.2** If the indexation clause applies to the insurance of the *buildings* valued in this manner, then the preliminary valuation shall remain valid for a period of 6 years counting from the date of the valuer's report. Any increase or decrease of the sum insured as a result of *indexation* shall be deemed to have been valued in the same manner.

**7.3** If a new valuer's report has not been issued on expiry of the stipulated periods, the preliminary valuation shall remain valid for a period of 12 months as a valuation by the parties themselves. After this period, the sum insured shall be deemed to be a statement advised by the *insured* himself.

**7.4** If it appears from the schedule that the insured *risk objects* have been valued by the parties themselves, such value shall be applicable until expiry of the contract. However, *insurers* shall retain the right to prove any overvaluation existing at the time of the loss or damage.

**7.5** The preliminary valuation by experts and/or by the parties shall become invalid in any of the following situations:

- transfer of the *real interest* and the new *insured* is using the valued property for different purposes, or
- the valued property is or will be out of use for a period exceeding 12 months, or
- the *building* is or will be vacant for a period exceeding 3 months, or
- the *building* is occupied by squatters, or
- *reinvestment* following loss or damage is not to take place.

## **Article 8 NOTIFICATION OF CLAIM AND CLAIM ASSESSMENT**

### **8.1 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*.

### **8.2 Appointment of claims assessors**

**8.2.1** The exclusive proof of the extent of the loss or damage 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 or damage 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.

Each party shall be entitled to demand the appointment of separate assessors for *buildings*, *machinery/equipment*, *goods* and loss of profits.

**8.2.2** 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.

**8.2.3** 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.



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

### **8.3 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 or damage.

### **8.4 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 9 LOSS AND EXTENT OF THE INDEMNITY**

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

**9.1.1** property damage: at the *insurers*' discretion, the difference between the value of the insured *risk objects* immediately before and immediately after the event or the cost of repair immediately after the event of such property which in the assessors' opinion is suitable for repair, as well as - in the case of insurance on the basis of *new replacement value* - the decrease in value caused by the event and not made good by the repair;

**9.1.2** loss of profits;

**9.1.3** the amount of the indemnity in excess of the sum insured in accordance with article 4.

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

**9.2** The determination of the value of the insured *risk objects* immediately prior to the event shall be based on the principles of valuation referred to hereinafter, whereas for the determination of the value immediately after the event these principles of valuation shall be taken into account.

**9.2.1** In the case of insurance on the basis of a valid preliminary valuation: the amount of the preliminary valuation.

**9.2.2** In the absence of a valid preliminary valuation, in the case of insurance of:

**9.2.2.1** *buildings*:

- the *reinstatement value*, if:

\* the *insured* notifies within 12 months following the date of the loss or damage that he will proceed to repair/reconstruction, either at the same site or elsewhere.

The repair/reconstruction must have commenced within a period of 24 months following the date of the loss or damage.

\* said value is lower than the *market value*;

\* the *building* is under an obligation of reconstruction.

- the *market value* if:

\* the *building* was offered for sale;

\* the *building* had been declared unfit for occupation or use by the competent authorities;

\* the *building* had been vacant or in disuse for more than 9 months;

\* the *building* or part thereof has been occupied by squatters for more than 3 months;

\* the *insured* has not notified within a period of 12 months following the date of the loss or damage that repair or reconstruction will take place or if the repair/reconstruction has not commenced within 24 months following the date of the loss or damage.

If the *insured* does notify within 12 months following the date of the loss or damage that repair or reconstruction will take place: the *reinstatement value* provided that the repair/reconstruction commences within a period of 24 months following the date of the loss or damage.

- the *demolition value* if:

- \* the *insured* had the intention to demolish the *building* prior to sustaining the loss or damage;
- \* the *building* was destined for demolition or expropriation.

#### **9.2.2.2 machinery/equipment: the new replacement value.**

However, the *replacement value* shall be adhered to:

- if the *insured* had the intention to discontinue the business prior to sustaining the loss or damage;
- if continuation of the business and *reinvestment* are not to take place;
- if the *insurers* are not notified in writing within a period of 12 months following the date of the loss or damage of the continuation of the business and/or *reinvestment*;
- for property whose *replacement value* is less than a percentage of the *new replacement value* stated elsewhere in the policy;
- for property which is no longer used for the purpose for which it was intended;
- for motor vehicles (including mopeds), caravans and other trailers, vessels, as well as parts thereof;
- for works of art, antiques and rare items.

#### **9.2.2.3 goods: the cost price or the replacement value whichever is the lower.**

In the event of *goods* sold but not yet delivered which are still for the account and at the risk of the *insured*: the selling price.

**9.2.2.4** If a value other than that described in articles 9.2.1 or 9.2.2 has been agreed: such other value.

**9.3** In the case of an index-based insurance, the effect of the index on the sum insured immediately before an event shall be taken into account up to the agreed maximum, if any.

**9.4** Any surplus resulting from overinsured *risk objects* shall be allocated to deficits on underinsured *risk objects* with due observance of and in the order provided in article 10.

**9.5** Unless a separate sum has been insured in this respect, the *tenant's fixtures and fittings* shall be deemed to be included in the sum insured for *machinery/equipment*.

**9.6** 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.

**9.7** The *insurers'* liability to pay indemnity shall not exceed the sum insured, on the understanding that even after application of article 10 indemnity shall never exceed the aggregate of the sums previously insured, but increased by the amount of the indemnity in excess of the sum insured in accordance with articles 4 and 5.2.

## **9.8 Proportionality provision**

**9.8.1** In the event of property damage, indemnity shall only be payable proportionally if the sum insured is less than the values of the insured *risk objects* immediately prior to the event.

**9.8.2** In the event of loss of profits, 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.

**9.8.3** Indemnity by virtue of article 4 shall be paid in full up to the limit of indemnity in this respect. The proportionality provision shall not be applicable.

## **9.9 First-loss provision**

**9.9.1** With respect to any cover provided under this insurance on a first-loss basis (the maximum amount which is indemnified in the event of loss or damage, irrespective of the actual value of the insured *risk objects* immediately prior to the event) the proportionality provision referred to in article 9.8 shall not be applicable.

**9.9.2** In the event of a claim being subject to a deductible, the claim amount which remains after deduction of the applicable deductible, shall be indemnified up to and not exceeding the first-loss sum.

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

**9.11** 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.

**9.12** In the event of a refusal of a claim to indemnity, the legal claim shall become prescribed by the lapse of twelve months.

**9.13** 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 10 RE-ALLOCATION OF SUMS INSURED**

**10.1** Should any property, whether or not it was insured with a preliminary valuation but with the exception of *risk objects* insured on the basis of declarations, no longer be present, the released sums insured shall be allocated to the replacement property. If the property not replaced or only partially replaced, then the released sums insured shall be included in the recalculation referred to in this article.

**10.2** The premium shall subsequently be recalculated on the basis of the values immediately prior to the event at the various premium rates.

**10.3** If the recalculation shows that the total of the original premiums is equal to or higher than the total of the recalculated premiums, the proportionality rule provided by article 9.8.1 shall not be applied and indemnity shall be paid on the basis of the value determined immediately prior to the event.

**10.4** If the recalculation shows that the total of the original premiums is less than the total of the recalculated premiums, the sums insured shall be reduced in the proportion which the payable premium deficits bear to the total premium surplus, so that the total amount of the then recalculated premiums equals the total amount of the original premiums, following which indemnity shall be paid in accordance with the proportionality rule provided by article 9.8.1.

**10.5** If more than one location is insured, then the re-allocation of sums insured for other locations to the location where the loss or damage occurred (hereinafter referred to as: the loss location) shall only be permitted up to and not exceeding a maximum stated elsewhere in the policy of the sums insured last known to the *insurers* in respect of such loss location.

## **Article 11 MOVEABLE PROPERTY OF THIRD PARTIES**

Insofar as the sums insured for *machinery/equipment* and *goods* allow it, moveable property of third parties shall also be included under the policy, at least if and insofar as said property is not or not sufficiently insured elsewhere.

## **Article 12 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* was notified of the exigibility thereof.

## **Article 13 OTHER POLICIES**

**13.1** The *insured* shall be obliged to produce a statement of all other policies known to him which provided cover against loss of or damage to the insured *risk objects* and/or (any element of the) loss of profits at the time of the event.

**13.2** If the insured *risk object* or 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: plate-glass insurance, valuables insurance, (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 14 TRANSFER OF REAL INTEREST**

**14.1** With respect to the insured *risk objects*, the policy shall follow the *real interest* if and insofar as it is transferred to another party. The following shall apply, except where *goods* are concerned.

**14.1.1** 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.

**14.1.2** 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.

**14.2** The provisions of this article shall not result in renewal of the insurance contract or any restriction of the right to cancellation on any other account.

**14.3** 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 15 PAYMENT OF PREMIUM AND INDEMNITY**

### **15.1 Definitions**

#### **15.1.1 Premium**

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

#### **15.1.2 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.

## 15.2 Payment of premium

**15.2.1** 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*.

**15.2.2** 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.

**15.2.3** 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.

**15.2.4** 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*.

## 15.3 Payment of indemnity and return of premium

**15.3.1** 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.

**15.3.2** 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 16 ACTS BY INSURERS

**16.1** Any act to which *insurers* are entitled or duly bound may be performed by them either collectively or individually.

**16.2** The manner in which an *insurer* uses his powers or meets his obligations shall not affect the legal status of the *co-insurers*.

**16.3** 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 17 NOTICES AND COMMUNICATIONS**

**17.1** 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.

**17.2** 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 18 INCEPTION AND EXPIRY OF THE CONTRACT**

**18.1** Inception and expiry of the contract shall both be at 12.00 local time at the location of the insured *risk objects*.

**18.2** 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 19 DISCLOSURE OBLIGATION**

**19.1** 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.

**19.2** 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 20 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 21 APPLICABLE LAW**

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

## **Article 22 DISPUTES**

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

## **Article 23 DEPOSIT**

In case of any difference between the wording of these conditions and the 'Standard Dutch Bourse Conditions for Property Damage and Loss of Profits Insurance 2006' [*Nederlandse Beursvoorwaarden voor Zaak- en Bedrijfsschadeverzekering (NBZB 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 Property Damage and Loss of Profits Insurance 2006 is available via the website of the VNAB (Dutch Insurance Exchange Association), [www.vnab.nl](http://www.vnab.nl).