

# FRENCH MARINE HULL INSURANCE POLICY FOR ALL VESSELS

Excluding fishing vessels, pleasure craft, sailing ships, and vessels with auxiliary engines.

Policy form of 1<sup>st</sup> January 1998

## GENERAL CONDITIONS

### PREAMBLE - APPLICABLE LAW

This contract is governed by French law and in particular by those provisions of Title VII, Book I, of the Code des Assurances which affect the marine insurance contract whether or not reference is made to them in the policy.

### CHAPTER I - EXTENT OF THE INSURANCE

#### ARTICLE 1 - Risks covered

This policy covers loss, damage, third party liability or expenses caused by perils of the seas (fortunes de mer) and other accidents to the insured vessel.

It therefore covers:

1. subject to a limit of the agreed value, **loss or damage incurred by the vessel**, even if caused by the decision of a governmental authority to avoid or minimize a risk of pollution arising from a peril insured against;
2. subject to a limit of the agreed value, **third party liability incurred by the vessel in consequence of her collision** with an oversea vessel or inland craft, a floating object or structure, **or in consequence of the insured vessel's contact** with any other property or installation, as well as (and subject to the same limit) third party liability incurred in respect of damage caused by the insured vessel's hawsers, anchors, chains or tenders while attached to the vessel or being handled or used in the operation of the vessel;
3. subject to a limit of the agreed value, **the vessel's contribution to general average, salvage and salvage charges, and legal costs incurred with insurers agreement in respect to insured third party liability, as well as expenses reasonably incurred to save the vessel from an insured peril or to minimize such a peril.**

#### ARTICLE 2 - Insurers' total liability

Insurers' liability for all cover under article 1 is **limited to a total of twice the agreed value.**

## **ARTICLE 3 - Exclusions**

**This insurance excludes:**

**1. loss, damage, liability or expenses caused by:**

- **blockade running, smuggling forbidden or clandestine trade, fines, confiscation, sequestration and requisition;**
- **any seizure, bond or other financial guarantee;**
- **wilful misconduct or gross negligence of the assured or his senior officers, viz, directors and officers, agency managers, superintendents or heads of technical departments;**
- **inherent vice, wear and tear;**
- **removal, destruction or marking of the wreck of the insured vessel;**
- **immobilisation of or delay to the vessel, quarantine, health measures or disinfection; - impediments to commercial operation of the vessel;**
- **death or injury to persons;**
- **war or civil war, hostilities, reprisals, torpedoes, mines and all other weapons of war and, gene-rally, all accidents and misfortunes of war, as well as acts of sabotage or terrorism of a political nature or related to war;**
- **capture, takings at sea, arrest, seizure, restraint, molestation or detention by any government or other authority;**
- **riots, civil commotions, strikes, lockouts and other similar events; - piracy of a political nature or related to war;**
- **any direct or indirect effects of an explosion, release of heat, irradiation or any other nuclear power supply due to the transmutation of atoms or radioactivity as well as any effects of radiation caused by the artificial acceleration of particles, whether through civil or military use or exploitation.**

**2. Loss or damage incurred by the vessel as a result of cargo being shipped in a manner not in accordance with current regulations and recognized trade practice where the assured is privy to such shipment.**

**Expenses resulting from repair or replacement of parts affected by latent defect.**

**3. Liability incurred by the insured vessel for damage or other financial detriment - in respect of cargo on board the insured vessel;**

- **in respect of any liability resulting from the engagements assumed by the assured solely under a contract,**
- **to the environment or as a consequence of pollution or contamination of any property or installation other than vessels or craft (or cargoes thereon) resulting from a collision with the insured vessel, when arising from escape or release of pollutant substances from that vessel.**

**Consequently, shall not be covered under this insurance, the "special compensation" payable to a salvor under Art. 14 of the International Convention on Salvage, 1989, to the extent specified in paragraph 4 of that article or under any other provision similar in substance.**

**4. Expenses incurred for refloating, salvage or recovery of the vessel in case of stranding resulting from normal tidal movements, unless the vessel is in a place normally used for commercial operations.**

## **CHAPTER II - TIME AND PLACE OF THE INSURANCE**

### **ARTICLE 4 - Navigation and mooring**

The vessel is covered everywhere within the geographical limits of the policy whether in use, moored, laid up or under repair, and whether floating or in dry dock.

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It remains covered when engaged in salvage operations. Insurers are liable for damage incurred in such operations only to the extent that the Assured is unable to recover elsewhere.

It also remains covered when effecting towage or transshipment outside its normal commercial operations **subject to prior notice to Insurers who may require any precautionary measures appropriate to the situation.**

### **Article 5 – Trading Limits**

**In the absence of prior notice, there is no cover :**

A. During sailing and mooring within the zones defined below unless the vessel is obliged to enter by force majeure or to render salvage services.

1. Waters north of Lat. 70°N and Greenland waters other than voyages direct to or from any port or place in Norway or Kola Bay.

2. Behring Sea, Eastern Asia north of Lat. 46°N; any port or place in Siberia except Nakhodka and/or Vladivostok.

3. To or from any port or place on the Atlantic coast of North America, its rivers or adjacent islands as follows:

a. at any time of year, north of Lat 52° 10'N and west of Long. 50°W;

b. between 21 st December and 30th April (both dates inclusive) south of Lat. 52° 10'N within the area bounded by lines drawn between:

- Battle Harbour and Pistolet Bay

- Cape Ray and Cape North (Nova Scotia) - Port Hawkesbury and Port Mulgrave

- Baie Comeau and Matane

c. between 1<sup>st</sup> December and 30th April (both dates inclusive) within the area between Montreal to the west and a line drawn between Baie Comeau and Matane to the east.

4. Any port or place on the Great Lakes or the St. Lawrence Seaway west of Montreal.
5. To or from any port or place on the Pacific coast of North America, its rivers or adjacent islands north of Lat 54° 30'N and west of Long 130° 50'W.
6. To or from Kerguelen or Crozet or south of Lat 50°S, except ports or places in Patagonia, Chile or the Falkland Islands, but the vessel may enter waters south of Lat. 50°S for the sole purpose of reaching or returning from ports or places not excluded by this article.
7. Baltic Sea and adjacent waters east of Long 15°E as follows:
  - a. north of a line between Mo (Lat 63° 24'N) and Vasa (Lat. 63° 06'N) between 10th December and 25th May, (both dates inclusive);
  - b. east of a line between Viipuri (Vyborg) (Long. 28° 47'E) and Narva (Long. 28° 12'E) between 15th December and 15th May, (both dates inclusive);
  - c. north of a line between Stockholm (Lat. 59° 20'N) and Tallinn (Lat. 59° 24'N) between 8th January and 5th May, (both dates inclusive);
  - d. east of Long. 22°E and south of Lat. 59°N between 28th December and 5th May, (both dates inclusive).

**B. When the vessel is in tow other than in port, in the roads, in rivers or in canals, other than in the course of salvage operations.**

#### **ARTICLE 6 - Continuation of the insurance**

If at expiry of the policy the vessel is under repair for damage covered by the policy or is on a voyage and suffering from such damage, cover under this policy is extended at a pro rata daily additional premium until either the repair or the voyage is completed (whichever shall first occur).

In case of total loss or abandonment during such extension a premium for a further six months is payable to insurers in addition.

### **CHAPITRE III – AGREED VALUE**

#### **ARTICLE 7**

**The vessel's agreed value shall be conclusive, each party to this insurance undertaking not to use any other estimate unless in case of fraud, and subject to the provisions of articles 22 and 25.**

**The agreed value include jointly the hull and machinery of the vessel as well as appurtenances and fittings owned by the assured and including ship's stores in particular.**

**If insurance is taken out without agreement of the vessel's insurers on an increased value basis or other supplementary interests, then the sum insured is reduced by the same amount in case of total loss or abandonment.**

## **CHAPTER IV - RIGHTS AND DUTIES**

### **ARTICLE 8 – Disclosure**

- 1. The assured must disclose, on concluding the contract of insurance, all circumstances of which he is aware that would influence the insurers in assessing the risks to be covered, in particular the flag, the classification society and the class of the vessel.**
- 2. The assured must disclose to the insurers, as soon as he is himself aware of them, circumstances affecting the risk which occur during the time of the insurance.**
- 3. The assured must immediately disclose any change in the vessel's flag or classification society and any alteration, cancellation or withdrawal of her class.**
- 4. The assured must disclose to the insurers any marine mortgage on the insured interest at the time the contract is concluded or during the currency of the policy. In such cases the premium must be paid immediately unless the mortgagees guarantee its payment on expiry of the insurance.**

### **ARTICLE 9 - Classification**

- 1. The assured undertakes to comply, by the dates required by the vessel's classification society, with any recommendations, requirements or restrictions imposed by that society, which relate to vessel's seaworthiness.**
- 2. Subject to the authorisation of the assured or of his duly authorised representative and after setting out his reasons, the leading insurer will be entitled to request from the vessel's classification society to consult the vessel's classification file.**

### **ARTICLE 10 -Premium**

**The assured must pay the premium at the agreed places and times.**

### **ARTICLE 11 - Preventive measures**

**The assured must take all reasonable care to ensure the safety of the vessel. He must take all reasonable measures to safeguard the vessel from an insured peril or to minimize the consequences of such peril. In case of failure to comply with these duties, the insurers may intervene in his place to take such measures deemed necessary without thereby admitting liability for their consequences.**

**ARTICLE 12 - Sue and labour**

**1. If an insured peril occurs:**

- the assured must and insurers may take or require all measures necessary to preserve or safeguard the insured property,
- the assured must take all measures necessary to preserve his rights against third parties may be liable.

**2- The assured must preserve insurer's rights against repair yards.**

**Notwithstanding this obligation, the insurers shall not take advantage of possible assured's partial or total waivers to claim against repair yards, when such waivers arise from the general conditions of the said yards.**

**3. The assured undertakes: to notify the insurer as soon as he is aware of any waivers that might give rise to the payment specific additional premium.**

**ARTICLE 13 - Application for survey and repair of damage**

**The assured must declare the occurrence of any insured peril as soon as he is aware of it and take steps to survey and repair loss and damage according to the conditions laid down in articles 18 and 20.**

**ARTICLE 14 - Penalties**

**Non-compliance with the duties listed above may lead, according to the particular circumstances, to: - the policy being declared void (articles 8-1 ° and 8-4°),**

**- cancellation of the policy at three days' notice or proportionate reduction of the indemnity (article 8-2°, 8-3° and 9-1 °),**

**- cancellation of the policy (article 9-2°),**

**- suspension or cancellation of the policy under the conditions imposed in Article 15 (article 10), - forfeiture of the right to indemnity (article 13),**

**- proportionate reduction of the indemnity (articles 11 and 12).**

**ARTICLE 15 - Premium payment provisions**

**Premium is payable 30 days after attachment of the policy.**

**If the insurance is for twelve months the assured may - if agreed before attachment of the policy - pay the premium in four quarters, that is:**

- the first quarter 30 days after attachment;
- the second quarter 3 months after attachment,
- the third quarter 6 months after attachment,
- the fourth quarter 9 months after attachment.

**The assured's failure to pay a premium gives insurers the right either to suspend the insurance or to require its cancellation. Such suspension or cancellation will only take**

**effect eight days after a demand for payment sent by registered letter to the assured's latest address known to the insurers. Suspension will automatically occur on expiry of such eight days and until 0000 hours on the day after payment of the delayed premium.**

**Insurers have no liability for any event occurring during the period when cover is suspended, but retain full rights against the assured as to performance of the contract, and in particular their right to receive full payment of the premium.**

**Premium for the whole period of cover is due in case of total loss or abandonment recoverable under the policy. If total loss or abandonment is not so recoverable, the premium is due proportionately to the time on risk until total loss or notice of abandonment, but subject to a minimum payment of three months' premium.**

**Premium is refunded in case of total loss, sale or bareboat charter of the vessel before attachment ; If the contract is broken before such attachment by the assured for any other reason, insurers are entitled to payment of half the agreed premium up to a maximum of 0, 50 % of the sum insured.**

**The cost of the policy and any taxes, fees, and duties, thereon is payable by the assured. Such amounts are payable in full in all cases, and when due.**

#### **ARTICLE 16 - Lay up in port**

1. If at the inception of the period of insurance, the vessel remains in port for at least fifteen consecutive days a return of 1/24 (one twenty-fourth) of the annual navigating premium will be made after deduction of the premium stated in the policy for port risks. If the period in port is longer than fifteen days, return of premium will be calculated as indicated above and for each consecutive fifteen days after the first fifteen days.

2. If during the period of insurance the vessel remains at least thirty days in port, a return of 1/12 (one twelfth) of the annual navigating premium will be granted subject to deduction of the premium stated in the policy for port risks. If the period in port is longer than thirty days, returns for port risks will be calculated for each period of fifteen consecutive days after the first thirty days.

Nevertheless, if repairs for insurers' account are carried out during the time spent in port the number of days required for such repairs will be deducted from the total of days spent in port when the return premium is assessed.

The total of such days must in any case attain the minimum period specified above before a return of premium is payable.

If repairs are carried out simultaneously for account of both the assured and insurers, the exact length of each set of repairs will be determined by surveyors appointed with the insurers' agreement.

3. Days of arrival and departure and days when repairs are started or completed do not count towards any entitlement to a return of premium.

4. The returns under paragraphs 1 and 2 of this article are not payable to the assured if there has been a settlement for total loss or abandonment. They are only assessed after expiry of each six-month period of insurance.

#### **ARTICLE 17 - Avoidance or cancellation of the insurance**

**In addition to the cases listed in article 14, the policy may be avoided or cancelled in the following circumstances:**

**Any insurance - whether or not concluded 'lost or not lost' - taken out after an accident involving the vessels is void if it is proved that news of the accident had in any way reached the domicile of the assured or insurers, even if reaching third parties unknown to either, unless the assured can prove his good faith.**

**In case of bankruptcy or insolvency of the assured, whether an individual or a company, either the receiver, the assured when authorized by the judge or the official liquidator as the case may be, or the insurer, may cancel the policy by sending a registered letter to the other party within three months as from the proceedings are started. Cancellation will occur automatically eight days after such sending and the insurer will waive any rights to premium in respect of the cancelled period of insurance.**

**If the policy is not cancelled as provided for in paragraph above, the receiver or the assured duly authorized to manage the business shall have to pay in cash the premiums payable in respect of the continued contract.**

**In case of bankruptcy and insolvency of an insurer, the assured may exercise the same rights in respect of such insurer as provided above.**

**Where any insurer's authorization to trade is revoked by the authorities the policy becomes invalid as far as provided under articles L 326-12 and R\*326-1 of the Code des Assurances in respect of the cover granted by such insurer.**

**If the vessel is subject to public sale or bareboat charter, the policy terminates automatically with effect from the date of sale or charter.**

**If the vessel or at least half the interest insured is sold the policy is terminated from the date of sale unless there is prior agreement to the contrary.**

**If the vessel is chartered other than on a bareboat basis, this policy continues unless otherwise agreed and subject to an additional premium if required.**

**The policy may be cancelled by mutual agreement before expiry of the period of insurance, with a proportionate return being made for each complete period of fifteen days not yet commenced; nevertheless net premium payable in such circumstances may not be less than half the premium charged for the full period of insurance.**

**The policy may be cancelled by the insurers at three days notice if any change attributable to the assured is made either to the property insured or to any course of action agreed at the time the contract was concluded, if as a result the risks shows a marked deterioration.**



**The policy may be cancelled by the insurers at one month if the cost of repairs in France has risen by more than 20 % compared with such costs at attachment of the policy, in such cases a proportionate return of premium will be made. In case of dispute the coefficient of price increase used will be subject to arbitration by the French Shiprepairers' Association (Chambre Syndicale des Réparateurs de Navires).**

## **CHAPTER V - SURVEY OF LOSS OR DAMAGE**

### **ARTICLE 18**

**In the absence of prior agreement by the insurers the assured must proceed with a joint survey of damage with insurers' representatives within sixty days of the accident at the latest, if damage occurs at a port this period is reduced to fifteen days.**

Surveyors appointed by mutual agreement or, if not, by the courts, are to investigate the cause of loss, ascertain its nature and extent, and draw up the specification of repairs acknowledged by them as necessary to restore the vessel's seaworthiness.

**The assured must arrange for these repairs to be carried out without delay. If for any reason, including force majeure, repairs are not carried out within six months of the date of accident, the sum for insurers' account may not exceed that which would have been payable if repairs as estimated by surveyors had been carried out within this period.**

## **CHAPTER VI - CALCULATION OF THE INDEMNITY**

### **ARTICLE 19**

**A separate settlement is made for each casualty.**

Settlement is made without deductible in case of total loss or abandonment. All other indemnities due in respect of a single event are settled after deduction of the amount indicated in the schedule attached to this policy.

Surveyors' and average agents' fees and expenses, as provided in article 18, are fully recoverable from the insurers.

### **ARTICLE 20 - Partial loss**

**1. In adjustment of partial loss insurers are liable only for the cost as proved by receipted invoices for replacement and repair recognized by surveyors as necessary to restore the vessel's seaworthiness. The assured may claim no other indemnity whether for depreciation, loss of hire or any other reason whatever.**

**2. Crew wages and maintenance, and any bunkers used are not for insurers' account except as specified below.**

3. Before taking any action relating to carrying out the repairs the assured must inform the insurers, who have the right to demand that replacement or repair is carried out after tenders. If the assured fails to observe this condition 25 % of the total replacement or repair cost will be deducted from the settlement without taking into any other franchise or deduction provided by the policy.
4. During the time between the drawing up of repair's specifications and acceptance of the tender, crew wages and maintenance and bunkers are for insurers' account.
5. When the vessel stays-.at a port of refuge waiting for spare parts essential to enable the voyage to continue, crew wages and maintenance and bunkers are for insurers' account while such spare parts are in transit. Additional expenses incurred to reduce the time spent in transit are also for insurers' account.
6. When repairs cannot be carried out or are too expensive at the port where the vessel is situated, then the insurers will also pay the cost of temporary repairs essential to permit the vessel to reach a port where repairs can be carried out at a lower price, the cost of any incidental towage which may be incurred, and crew wages and maintenance and bunkers used during the voyage.
7. Bank charges, interest and all other expenses associated with the repairs such as dry-docking expenses and port dues are adjusted and paid by the insurers in proportion to the various repairs carried out at the same time.
8. For special expenses in respect of the ship's bottom, shall only be payable by insurers, as proved by receipted invoices, the expenses incurred for supplying and applying anticorrosion layer, first coats of primer, top anti-fouling paints and self- polishing coats to the underwater surfaces of the vessel, when such repairs are allowed as partial average.

When as a consequence of a particular average, the vessel must stay in dry-dock for so long a period that the above-mentioned layers lose their efficiency, half of those special expenses incurred in respect of the vessel's bottom should be allowable in particular average for half of their amount.

#### **ARTICLE 21 - Abandonment**

Abandonment of the vessel may take place in the following cases:

- total loss;
- where the total cost or repair for insurers' account amounts to the agreed value, provided that the total sum is calculated in accordance with the provisions governing settlement of partial loss including if necessary the costs of refloating the vessel;
- where no news of the vessel has been received for more than three months; loss is then deemed to have occurred at the date when the last news of the vessel was received;
- when the vessel cannot be repaired. **Nevertheless, loss of the vessel merely from insufficient funds to pay repair or other costs does not entitle the assured to abandon her to the insurers.**

Abandonment must be notified to the insurers within three months of the event giving rise to it and within three months of the period permitting such abandonment.

In notifying abandonment the assured must disclose all insurances which he has taken out or which he is aware.

In all cases giving rise to abandonment, the insurers to whom the insured property has been abandoned are entitled to accept abandonment or to settle the claim as a total loss without transfer ownership.

Nevertheless, they are bound to inform the assured of their decision within thirty days of the date which the assured has submitted all relevant evidence of his right to abandonment.

Cover under this policy shall terminate as from the time the insurers give written notice either of:

- their acceptance of abandonment or,
- their admitting the claims as total loss without any change of ownership.

#### **ARTICLE 22 - General average**

The vessel's contribution to general average is recoverable under this insurance. However, the insurers will only pay such proportion of general average as the agreed value bears to the full contributory value, their payment being subject to reduction on for any partial loss recoverable under this insurance.

With regard to settlement between the insurers and the assured no derogation from this insurance is permitted, any general average adjustment being readjusted if necessary in accordance with the provisions of this policy.

The master and the assured have authority not to declare general average in respect of loss expenses involving the vessel or cargo where the amount in question is not expected to exceed 1% of the agreed value for hull and machinery provided that such loss or expenses do not exceed FRF 350 000.

#### **ARTICLE 23 - Sailing in ballast**

When the vessel sails in ballast and there is no other contributory interest the provisions of article 2 apply to expenses and sacrifice which would have had the nature of general average if the vessel has been carrying cargo.

#### **ARTICLE 24 - Third party claims**

If the assured does not invoke any limitation of liability to which he may be entitled under applicable law, the total indemnity payable by the insurers shall not exceed that payable if such limitation had been invoked.

#### **ARTICLE 25 - Salvage**

In case of salvage of the insured vessel the proportion of salvage and salvage charges incurred by her is for insurers' account. However, the insurers will only pay such proportion of salvage and salvage charges as the agreed value bears to the full contributory value.

**ARTICLE 26 - Collision or salvage services between vessels belonging to the same assured**

If the insured vessel collides with a vessel owned by the assured or receives salvage services from such vessel, the indemnity payable by the insurers shall be adjusted as if the vessels belonged to different shipowners.

The same applies if the vessel comes into contact with property or installations belonging to the assured.

In the absence of an agreed settlement between the insurers and the assured, liability for collision or payment for salvage services shall be determined by a sole arbitrator in accordance with the provisions of the Nouveau Code de Procédure Civile (Livre IV) or, in the case of failure to agree on a sole arbitrator, by the Chambre Arbitrale Maritime de Paris.

**CHAPTER VII - PAYMENT OF INDEMNITY**

**ARTICLE 27 - Payment of loss or damage**

All loss or damage for insurers' account are payable thirty days after presentation of all relevant evidence to the bearer of such evidence and of this policy, without power of attorney being required.

When loss or damage is indemnified all premium payable by the assured up to the time of settlement, is set off against the indemnity in case of bankruptcy or insolvency and any bond containing a promise to pay insurers is redeemable immediately.

If neither bankruptcy nor insolvency is declared the insurers are only entitled to set off premium due for expired and unexpired periods under this insurance.

**After the occurrence of any casualty leading to recovery under this insurance the sum insurance is reinstated automatically subject to an additional premium to be agreed.**

**ARTICLE 28**

If this policy is underwritten by more than one insurer then shall be liable only for his own respective proportion of the sum insured and has **no joint liability with any other insurer.**

The leading insurer is empowered to receive on behalf of all interested insurers all evidence and documentation relating to the operation off this policy **but he does not thereby have any authority to represent his co insurers at law.**

The insurers are vested with the rights of the assured to the extent of the indemnity they have paid and only on completion of such payment. The assured undertakes, when required by the insurers, to restate this transfer of right in the adjustment in any receipt for settlement or other document.

**Any actions under this insurance policy shall be barred at the end of two years.**

**The insurers may only be sued before the Tribunal de Commerce of the place where the leading insurer's insurance market is situated.**

## **CHAPTER IX - INSURANCE OF SEVERAL VESSELS UNDER ONE POLICY**

### **ARTICLE 29**

The proportion underwritten by each insurer and expressed in relation to the total sum insured remains constant over the respective sums insured.

The insurance shall be deemed to be a separate policy on each vessel.