

FRENCH MARINE CARGO INSURANCE POLICY

"F.A.P. Sauf...." COVER

(Free from Particular Average unless those attributable to a major event covered by the Policy)
(POLICY FORM DATED JUNE 30, 1983 AS MODIFIED FEBRUARY 16, 1990 AND OCTOBER 22, 1998)

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 - APPLICATION OF THE INSURANCE

ARTICLE 1

This insurance applies, within the limits of the insured voyage, to the cargo designated hereafter when transported or received for shipment by shipping or forwarding companies in accordance with recognised trade practice.

ARTICLE 2

This insurance applies to cargo in new condition packed or prepared for transit, loaded on oversea vessels less than 16 years old, over 500 GT and with the highest classification issued by a Classification Society full member of the International Association of Classification Societies (I.A.C.S.).

When, unknown to the Assured, the above requirements for the vessel are not met, the insurance remains in force **subject to the Assured disclosing the circumstances to the insurer as soon as he is aware** and subject to payment of an additional premium if required.

ARTICLE 3

1° **This insurance does not apply to :**

- a) **liability** for any reason which the Assured or any other beneficiary of this insurance, whether on their own account or on account of the insured cargo, could incur, in respect of third parties or joint contracting parties ;
- b) the consequences of **trade barriers, or hindrance to the commercial transactions** of the Assured or any other beneficiaries of the insurance ;
- c) **the illegal or clandestine trading of cargo.**

2° **For shipments made on passenger ships, oil tankers, gas carriers, bulk carriers or cargo high speed craft of 500GT and upwards, this insurance only applies where:**

- a) the "Safety Management Certificate" is held by the carrying vessel,
 - b) the "Document of Compliance" is held by her company,
- as required under the SOLAS Convention 1974 as amended, establishing the International Safety Management (ISM) Code.

Nevertheless, when the carrying vessel and her company do not hold the above mentioned documents, the vessel's situation regarding the ISM Code should not be opposed either to the assured or the holder of the insurance certificate, when he proves that, in the ordinary course of business, he was not aware of that situation.

"Company" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all duties and responsibilities imposed by the International Safety Management Code.

ARTICLE 4

The insurance is invalid if it is proved that before the contract had been concluded, news of an event involving the insured cargo had reached the place where the policy was signed or the place where the Assured was without there being any need to prove that the Assured was personally aware of it.

CHAPTER II – EXTENT OF THE INSURANCE

1 - COVER

ARTICLE 5

1° **This insurance covers physical loss or damage and loss in weight or quantity of the insured cargo caused by one of the events listed as follows:**

- sinking, capsizing, stranding or grounding of the vessel or craft ;
- collision or contact of the vessel or craft with fixed movable or floating objects including ice ;
- entry of water causing the vessel or craft to enter a port of refuge and there discharge all or part of its cargo ;
- the insured package falling or being dropped overboard during loading aboard, transhipment or unloading from vessel or craft ;
- derailment, collision, overturning, falling or breakage of the land conveyance ;
- collapse of buildings, bridges, tunnels or other constructions ;
- breach of dikes or pipelines ;
- falling of trees, caving-ins, avalanches ;
- flooding, overflowing of rivers or streams, breaking-up of ice, tidal waves ;

- fire or explosion ;
- falling aircraft.

2° **Cargo loaded on deck or on the superstructure of vessel or craft non designed for such purpose** may also be covered on payment of an additional premium against loss or damage from jettison or from washing or falling or being dropped overboard.

ARTICLE 6

A – This insurance also covers in full, proportionately to the insured value, any expenses in the following list if resulting from one of the events listed in Article 5-1°:

1° expenses reasonably incurred for the purpose of protecting the insured cargo from insured physical loss or damage or of minimising such loss or damage ;

2° expenses reasonably incurred through interruption or termination of the voyage for unloading, warehousing, transshipment or forwarding of the insured cargo to the destination named in the policy, on condition that such expenses have not been incurred as a result of financial default of the owners, managers or charterers of the carrying vessel ;

B – General Average and salvage charges are covered in full, proportionately to the insured value, unless resulting from an event excluded by article 7, the insurer furthermore agreeing to pay any general average deposit or providing a guarantee of payment of general average or salvage charges.

2 - EXCLUSIONS

ARTICLE 7

This insurance excludes physical loss or damage, loss in weight or quantity of the insured cargo resulting from :

1° confiscation, sequestration, requisition, blockade running, smuggling, any kind of arrest or seizure, the insurer furthermore not being liable for any security payable for release of the insured cargo in such circumstances ;

2° wilful misconduct or gross negligence of the Assured or any other beneficiary of the insurance or their servants, representatives or other authorized persons ;

3° inherent vice of the insured cargo ; worm and vermin ; effect temperature ; ordinary leakage or ordinary loss in weight or volume ;

4° absence, inadequacy or unsuitability of :

- preparation, packing or packaging of cargo,

- securing or stowing of cargo in a shipping unit, when carried out by the Assured, his representatives or any beneficiary of the insurance, or when carried out prior to attachment of the insurance.

5° delay in forwarding or arrival of the insured cargo unless resulting from sinking, capsizing or stranding or grounding of the vessel or craft, fire or explosion, collision or contact of the vessel or craft with a fixed movable or floating object including ice ; falling aircraft ; entry of water causing the vessel or craft to enter a port of refuge and there discharge all or part of its cargo ;

6° 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.

7° a) war or civil war, hostilities, reprisals, torpedoes, mines and all other weapons of war, and generally all accidents and misfortunes of war, as well as acts of sabotage or terrorism of a political nature or related to war ;

b) capture, takings at sea, arrest, seizure, restraint, molestation or detention by any government or authority ;

c) riots, civil commotions, strikes, lockouts and other similar events ;

d) piracy.

CHAPTER III – TIME AND PLACE OF THE INSURANCE

ARTICLE 8

Unless otherwise agreed, this insurance attaches when the insured cargo as defined in Article 2 leaves the warehouse at the place named herein for the commencement of the insured transit and terminates on delivery to the warehouse of the consignee, his representatives or other authorized persons at the place of destination.

Warehouse of the consignee, his representatives or other authorized persons, is deemed to include any place – whether belonging to them or not – where such parties stored cargo on arrival.

ARTICLE 9

Without prejudice to the provisions of article 11, this insurance remains in force, subject to the payment of an additional premium if required, during any change of the insured voyage or extension of its normal duration provided such change or extension of voyage is beyond the control of the Assured or other beneficiaries of the insurance.

ARTICLE 10

This insurance terminates on any delivery of the insured cargo to the Assured or to any other beneficiary of the insurance, or to their servants, representatives or other authorized persons before normal termination of cover in accordance with the provisions of this chapter.

ARTICLE 11

This insurance terminates no later than 60 days after the completion of discharge overseaside of the insured cargo from the last oversea vessel.

CHAPTER IV – INSURED VALUE**ARTICLE 12**

The insured value, which must be proved in case of loss or damage, shall not exceed the highest of the amounts calculated as follows :

- 1° the cost of the insured cargo at the place of destination, plus the expected profit ;
- 2° the value at the place of destination on the date of arrival as determined by customary published commodity prices ;
- 3° the provisions in the contract of sale ;
- 4° replacement cost in the case of manufactured cargo provided that the corresponding invoices are produced as evidence of such replacement.

CHAPTER V – DUTIES OF THE PARTIES TO THE INSURANCE**1 – DUTIES OF THE ASSURED AND OTHER BENEFICIARIES OF THE INSURANCE****ARTICLE 13**

The whole premium is payable to the insurer as soon as cover attaches. It is payable in full to the insurer at the place of underwriting and at the time of issue of this policy. **In case of loss or damage, the insurer may deduct the amount of the due premium from the indemnity paid to the beneficiaries of the insurance.**

ARTICLE 14

1° The Assured shall disclose, on concluding the contract of insurance, all circumstances of which he is aware that would influence the insurer in assessing the risks to be covered.

2° In the same way, he must disclose to the insurer, as soon as he is himself aware of it, any circumstance affecting the risk which occurs during the time of the insurance.

ARTICLE 15

The Assured, his representative and all beneficiaries of the insurance must take all reasonable care to ensure the safety of cargo. They shall also take all reasonable measures to safeguard cargo or avert or minimise loss of or damage to it. In case of failure to comply with these duties, the insurer may intervene in their place to take such measures deemed necessary without prejudice to his liability.

ARTICLE 16

The Assured, his representative and all beneficiaries of the insurance **shall also take all measures to preserve the possibility of recovery and other rights against carriers and any other third parties who may be liable** and, should the occasion arise, to allow the insurer to institute any proceedings which he may deem necessary.

ARTICLE 17

They must on arrival of cargo at the place of destination of the insured voyage and when one of the events named in Article 5 has occurred or is deemed have occurred, apply to the claims agent (commissaire d'avaries) of the "Comité d'Etudes et de Services des Assureurs Maritimes et Transports de France (CESAM)" or in the absence of such, to any organisation nominated under the item "claims agent" of the special conditions of this policy, to obtain a contradictory survey ("expertise contradictoire"). Application for survey shall be made within three days of termination of cover, not including non-working days, as determined in chapter III. Any counter-survey ("contre-expertise") must be conducted in the presence of the insurer and of the Assured (or representatives of either party) within fifteen days of the initial survey.

ARTICLE 18

Non-compliance with the duties listed above will lead either to avoidance of the policy in the event of non-disclosure or misrepresentation by the Assured (article 14-1°), cancellation of the policy in the event of non-disclosure by the Assured of material circumstances affecting the risk (article 14-2°), reduction of measure of indemnity (article 15 and 16) or forfeiture of the right to indemnity (article 17). Where, in the cases enumerated in article 14-1° and 2° the utmost good faith of the Assured is proved, only reduction of the measure of indemnity shall apply.

2 – DUTIES OF THE INSURER : CLAIMS ADJUSTMENT AND PAYMENT OF THE INSURANCE INDEMNITY.**ARTICLE 19**

Claims adjustment and payment of indemnity are made separately on each package except for cargo transported in bulk where it is made per hold, per tank, by individual account or on the total shipment.

ARTICLE 20

The amount of loss, ascertained as above, is determined by comparison of the value of the insured cargo in its damaged condition with that which it would have had in sound condition at the same time and place, the percentage of depreciation so calculated to be applied to the insured value.

The measure of indemnity shall include surveyors' and claims agents' expenses and fees due as provided in article 17.

ARTICLE 21

In the case of sale short of destination which has been agreed as a result of insured physical loss and damage, the indemnity is calculated as the difference between the insured value and the net proceeds.

ARTICLE 22

If through insured physical loss or damage, the insurer decides to send all or part of the insured cargo back to the place of manufacture for repair, the resulting expenses and risks are for his account even if he must thereby pay an amount higher than the total insured value.

ARTICLE 23

When total profit cannot be proved, it is limited to a maximum of 20 % of the price of the cargo at the place of destination as mentioned in article 12-1°

ARTICLE 24

In respect of adjustment of loss or damage, increased value insurances are subject to the same provisions as double insurance.

ARTICLE 25

Where a franchise is agreed, it does not include ordinary leakage or loss in weight or volume.

ARTICLE 26

The insured cargo may only be abandoned in the following cases :

- 1° In the case of loss without news of the carrying vessel : after 4 months counting from the date of the last news received ;
- 2° When the carrying vessel, as a result of an event insured against, is admitted to be clearly unfit to continue the voyage : after 4 months counting from the date of the declaration of unseaworthiness of the vessel made by the carrier if during that time it has not been possible to reforward cargo to the place of destination ;
- 3° When the total of physical loss or damage to be indemnified by the insurer amounts to at least three quarters of the insured value.

ARTICLE 27

The indemnity due by the insurer is payable in full at the latest 30 days after production of all necessary documents to the bearer of those documents and on surrender of the original policy document.

No one may recover under this insurance without proof of having suffered loss or damage.

ARTICLE 28

After any event leading to indemnity by the insurer the full insured value is automatically reinstated on payment of an additional premium.

ARTICLE 29

If this policy is underwritten by several insurers, each shall be liable **only for his own respective proportion** of the sum insured.

ARTICLE 30

The leader is empowered to receive on behalf of all interested insurers all documentation and evidence relating to the operation of this policy, **but he does not thereby have any power to represent at law the co-insurers.**

CHAPTER VI – PROCEDURAL MATTERS

ARTICLE 31

The insurer is vested with the rights of the Assured to the amount of the indemnity he has paid and only on completion of such payment. The Assured undertakes – if asked by the insurer – to restate this transfer of rights in the adjustment, in any receipt of settlement or any other document.

ARTICLE 32

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

ARTICLE 33

The insurer may only be sued before the Tribunal de Commerce of the place of underwriting of the policy.

This document is a translation of the French Marine Cargo Insurance Policy. It is issued for the convenience of the parties to the contract, being understood that, in case of difference of interpretation, the French text shall have precedence over this translation.