

The original Swedish wording of the Conditions to be decisive in case of dispute

## **GENERAL SWEDISH HULL INSURANCE CONDITIONS FOR SMALL VESSELS of 2002**

**These Conditions are recommended by the Swedish association of Marine Underwriters. Nothing shall prevent the Insurer and the Assured from reaching agreement on other conditions.**

### **The scope of the insurance**

#### § 1

##### ***Objects covered by the insurance***

The insurance covers the ship as well as spare parts on board. The insurance also covers such equipment and spare parts on board the ship which belong to the Assured or which the Assured has borrowed, hired or purchased under a hire-purchase agreement.

Parts of the ship, her equipment and spare parts are covered by the insurance also during the period when these objects have been temporarily removed from the ship on account of loading, discharging, repairs or reconstruction provided that the objects are to be put on board again before sailing.

Fishing-tackle is covered when it is on board the ship but not when it is used in the sea.

The insurance, however, does not cover fuel, provisions or equipment intended for consumption. The same applies to loose shifting boards, extra dunnage, timber and other material intended for shoring, supporting, lashing or separation of cargo.

#### § 2

##### ***Insured value***

The insurance value shall correspond to the market value of the ship and equipment. The insured value stated in the insurance contract is binding on the Insurer unless the Assured when effecting the insurance has given misleading information concerning the ship, which is of importance to the Insurer to know when estimating the value of the ship. In such an event the market value of the ship, immediately before the casualty did occur, is applied as the insured value.

#### § 3

##### ***Commencement and termination of the insurance liability***

The date and hour for the commencement and the termination of the insurance liability shall be governed by the local time at the places where the ship is at the said times.

#### § 4

##### ***Prolongation***

1. Should the insurance expire while the ship is at sea, the insurance shall remain in force until midnight of the day on which the ship arrived at the first port and anchored or moored there in customary manner. Such prolongation of the insurance is only valid for maximum seven days. However, if before the expiry of the said period the ship should leave the port or be shifted for departure, the liability terminates as soon as the ship begins to heave anchor or to let go her moorings. If the ship, at the expiry of the insurance period, is undergoing repairs in consequence of a casualty, for which the Insurer is liable, or is, in consequence, in an unseaworthy condition, the insurance is extended and remains in force until the ship has again been made seaworthy or has been condemned. Where, at the expiry of the insurance period, a new insurance commences to run with the same Insurer, the first insurance is not to be prolonged in the above-mentioned case.

2. Where the ship is missing according to § 24 and the insurance period expires before the right to compensation has arisen, the insurance is extended up to the time when such right has

arisen.

3. The Insurer's right to prolongation premium is dealt with in § 15:4.

#### § 5

##### **Premature termination of the insurance liability**

The insurance terminates automatically:

- a) should the ship or the majority of the proprietary rights to the ship and/or the shipping company be transferred to another Owner;
- b) should the existing title be changed so that the determining influence as proprietor is transferred to another subject than the former Owner;
- c) if the classification of the ship has been revoked,
- d) if the class has been transferred to another classification society or terminated in another way;  
unless the Insurer expressly permits that the insurance shall continue despite the change of ownership position or class.

#### § 6

##### **The scope of the insurance**

The Insurer is liable for sudden and unexpected occurrences, subject to the exceptions stated in these conditions, for:

- a) actual or constructive total loss of the ship;
- b) the ship's contribution to General Average, contribution to disbursements as per § 17:6 of the Swedish Maritime Code or equivalent legal provision as well as non-payment of contribution in General Average from the cargo interests or any other interested party liable for such a contribution to the ship with regard to damage recoverable in the General Average according to adjustment which has been duly drawn up and which has acquired legal force or has been approved by the Insurer; non-payment of contribution from such a party is only reimbursed if the Assured has taken out an average bond and the refusal of the party to pay is due to breach of the contract of affreightment; the ship's contribution is recoverable according to the adjustment even if the contributory value exceeds the agreed insured value of the ship;
- c) loss incurred for the purpose of completing a voyage in ballast or for saving the ship when carrying no cargo to the extent that the loss should have been made good in General Average had the ship carried cargo; however, wages and maintenance during time for permanent repairs are not recoverable, nor are expenses in substitution for such disbursements; damage to the ship is compensated according to the provisions about particular damage if these are more advantageous to the Assured;
- d) such damages as the Assured is liable to pay to a third party according to applicable principles governing the law of torts for damage inflicted to property by the ship through direct collision/contact with some other ship or object, and also such damages as the Assured is liable to pay in accordance with contract of towage for damage inflicted to tugboat or other boats that assist in the maneuvering of the ship through direct collision with the ship. Where the ship insured collides/contacts with a ship or an object belonging to the same Owner, this circumstance shall not affect the Insurer's liability;
- e) damage to the machinery if directly caused by the ship having stranded, collided with a ship or other objects – including icebergs in the open sea, but not ice otherwise – , capsized or sunk, or by fire, explosion or lightning;
- f) all other perils to which the ship is exposed subject to the limitations provided for in these conditions;

g) reasonable expense or sacrifice incurred in good faith to avert a peril for which the Insurer is liable or, where a loss has been incurred, to prevent further loss even if the expense or sacrifice is not attributable to General Average; where the expense or sacrifice has been incurred jointly for the insured ship and other interest, the Insurer is liable for such proportion of the expense or sacrifice as can reasonably be considered to fall on the ship.

When damage to the ship is not payable, no expenses arising from the said damage shall be made good except salvage and adjustment charges. The costs of salving anchor, lifeboat or other equipment of the ship are reimbursed subject to agreed deductible.

## §7

### **Maximum limits of liability**

#### Hull damage

1 a) For loss other than third-party compensation, the Insurer is liable up to the amount insured on any one recoverable casualty.

1 b) Even if the amount insured is exceeded, the Insurer nevertheless indemnifies:  
reasonable expense or sacrifice incurred in order to avert or minimise loss or damage;  
reasonable expense incurred to protect rights of recourse against a third party;  
reasonable expense incurred in order to provide security for salvage charges or for damages;  
reasonable cost of average adjustment;

#### Third-party losses

7.2 In addition to what is stipulated above, the Insurer is liable, on each recoverable casualty, for third-party damages, including interest and expenses incurred in defending claims by such third party, up to the amount insured.

#### Release from further liability for hull damage

7.3 The Insurer is entitled to release himself, in the case of a casualty, from further liability by paying the amount insured and indemnifying such costs as have been incurred or for which liability has arisen before the Assured received notice of the Insurer's decision and for which the Insurer is liable.

## § 8

### **Unindemnifiable loss or damage**

The Insurer is not liable for:

- 1.a) loss or damage caused by normal use of the ship, her machinery or equipment;
- b) damage to the machinery beyond what is stated in § 6 e);
- c) damage to machinery that occurs or is reported to the Insurer more than six months after the ship incurred a casualty that was caused by an occurrence referred to § 6 e);
- d) damage to part or unit as a consequence of
  - i) wear and tear, age, corrosion, pitting or insufficient maintenance and care;
  - ii) faulty material or construction;
2. particular, partial or total damage caused by ice – however, not included incrustation by ice or collision with icebergs in the open sea.
3. The Insurer is not liable for loss or damage caused by:
  - a) the ship being used for unlawful purposes except where the Assured neither knew nor ought to have known of this fact at such a time that it would have been possible for him to intervene;
  - b) war, civil war or similar contingencies covered by the General Swedish War Risk Insurance

Conditions in force at the time when the insurance was effected;

c) embargo, seizure, confiscation or other measure implemented by civil or military authorities, except for cases that the ship, as a result of a casualty for which the Insurer is liable, suffers physical damage through measures by military or civil authorities aimed at preventing or mitigating damage to the environment, provided such measures have not resulted from the Assured's intentional or negligent omission to take reasonable measures to prevent or mitigate such damage to the environment and that the event is not covered by applicable Swedish War Risk Insurance Conditions;

d) requisition by civil or military authorities; nor for damage sustained by the ship while under requisition;

e) strikes, lockouts, riots, civil commotion, sabotage, plundering or mutiny.

Nor is the Insurer liable for:

f) damage or liability, directly or indirectly caused by, contributed to by or arising from:

1) release of nuclear energy, fission or fusion in connection with explosion or test explosion of nuclear weapons or nuclear charge.

If contamination by means of radioactive material has taken place or if other direct influence of such an explosion has contributed to the damage, the damage in its entirety shall be considered as caused by the explosion;

2) other nuclear damage, which means damage caused by:

i) radioactive properties of nuclear fuel;

ii) radioactive products;

iii) radioactive properties in combination with toxic, explosive or other hazardous properties of the fuel or the product, and/or

iv) damage, caused by ionising radiation from other source of radiation in a nuclear installation or atomic reactor than nuclear fuel or radioactive product.

The terms nuclear fuel, radioactive product, atomic reactor and nuclear installation shall be defined as per the Swedish Nuclear Liability Act (1968:45).

*Clause 8.3.f) shall be paramount and shall override anything contained in this insurance inconsistent therewith.*

4. a) such third party damages or for such expenses as the Assured has to pay for

i) damage caused by chemicals, oil, gas, steam or similar solid, fluid or volatile substances or for the laying out of booms or for other preventive actions taken in order to prevent such damage, whether constituting General Average or assumed General Average in accordance with the York-Antwerp Rules of 1994. The Insurer has nevertheless to pay expenses incurred in order to prevent damage caused by leakage from the ship in drydock in connection with survey or repairs of an average damage and expenses for internal cleaning of the drydock after such leakage;

ii) damage caused by wash or otherwise by the maneuvering of the ship, by the use of her anchors, mooring or tow ropes, loading and discharging devices, gangways etc. or by the ship's cargo, unless constituting General Average or assumed General Average;

b) personal injury or for damage to the ship's own cargo or such objects or installations on board which do not belong to the Assured or which the Assured has borrowed, stored, hired or purchased under a hire-purchase agreement;

c) damage to third party caused by the insured ship towing another ship unless the towage was

occasioned by salvage under such circumstances that it must be held justifiable;

d) damage sustained, when the insured ship has salvaged another ship and received salvage money therefore; where the damage sustained exceeds the salvage money the exceeding proportion of the damage is, however, allowed as Particular Average.

5. a) compensation to a Charterer or other person, who has an interest in the insured ship;

b) damage caused by the fact that the Assured has entered into a contract of affreightment or other agreement containing unusual conditions;

c) costs for passengers.

6. a) wages and maintenance of crew and similar expenses connected with the running of the ship, except when allowed in General Average;

b) loss of time, interest, profit or market, increase in costs or other indirect loss suffered by the Assured;

c) the Assured's costs for superintendent or other representative for the Assured in connection with the casualty or the repairs.

7. The Insurer is not liable for the:

a) costs of removing the wreck of the insured ship;

b) expenses for removal of wreck belonging to a third party.

8. The Insurer is not liable for:

a) expenses for painting bottom outside an area affected by a casualty;

b) damage to articles used for mooring, towing etc. and to tarpaulins unless the loss is a consequence of the ship having sunk or is attributable to collision, fire or theft;

c) objects damaged when being used for the lashing or covering of deck cargo or when being used as bedding therefore;

d) damage to the ship in connection with discharge or loading, unless the damage is a consequence of an extraordinary event;

e) damage to zinc slabs, magnesium slabs etc. fitted for protection against corrosion, unless the objects were torn away through external force;

f) costs of handling, transportation and destruction of cargo in connection with repairs to the ship after a casualty (particular average);

g) costs of destruction of oil products.

§ 9

**Trading area**

The insurance applies within the trading area stipulated in the insurance policy.

## Duty of disclosure

§ 10

### ***Duty of disclosure on effecting the insurance***

1. The Assured shall on effecting the insurance give the Insurer all information about the ship that may require, or which the Assured realizes to be of importance for the Insurer when considering the risk.

### ***Other insurance***

2. Where a proportion of the ship or an interest attaching to the ship is or will be insured with another Insurer, the Assured shall disclose this and state the name of this Insurer. Should this be omitted, and the omission can be considered detrimental to the Insurer, he is entitled to a reasonable proportional reduction in the amount of compensation, or to complete exemption from liability.

### ***Dishonest presentation and suppression or other dishonorable conduct***

3. Where at the conclusion of the contract, the Assured has dishonestly presented or suppressed any fact which can be assumed to be of importance to the Insurer or where even if a fraudulent act cannot be presupposed, the Assured has presented or omitted to disclose any fact under such circumstances that it would be contrary to honour and good faith with knowledge of this condition to invoke the contract, the contract is not binding on the Insurer, who is nevertheless entitled to the whole premium agreed upon.

### ***Incorrect information, good faith***

4. Where it can be assumed that the Assured neither could nor ought to have realized at the conclusion of the contract that a statement made by him was incorrect, the incorrectness shall have no effect upon the Insurer's liability. The Insurer may, however terminate the contract 14 days after notice of termination.

### ***Incorrect information in other case. Negligent omission***

5. Where in other respects than provided for in subsects, 3 and 4, the Assured has given incorrect information or negligently omitted to disclose any circumstance known to him, the importance of which he must or ought to have realized, and if it can be assumed that the Insurer, knowing the actual circumstances, would not have accepted the insurance at all, the contract is not binding on the Insurer, but he is nevertheless entitled to the whole premium agreed upon.

Where it can be assumed that the Insurer might have accepted the insurance but would have demanded a higher premium or stipulated conditions different from those used in the contract, the Insurer is liable for a casualty only to such an extent as it can be proved that the misrepresentation or the non-disclosure has been without importance for the casualty or for the extent of the damage.

Non-disclosure by the Assured in other cases than mentioned above does not affect the Insurer's liability.

### ***Demand for exemption***

6. Where the Insurer becomes aware that such a case exists as provided for in subsects. 4 and 5 and does not without undue delay notify the Assured that and to what extent he demands to be exempted from liability, such exemption cannot subsequently be demanded by him.

### ***When incorrect information or omission does not affect liability***

7. Misrepresentation or non-disclosure does not affect the Insurer's liability where he knew or ought to have known the actual circumstances, nor where the circumstances to which the misrepresentation or non-disclosure related was without importance for the Insurer or has ceased to be of importance for him after conclusion of the contract.

§ 11

### ***Duty of disclosure during insurance period***

1. Where after conclusions of the insurance contract, the Assured becomes aware of such circumstances as provided for in § 10, he must without delay inform the Insurer;

Where the ship is requisitioned by government authorities, the Assured must give notice thereof without undue delay.

The Assured is also liable to give notice without undue delay of changes to the operation of the ship (so-called management).

2. The Assured must without delay notify the Insurer about the ship's voyages where the ship undertakes a voyage which considering her type, size and draught, the season and other circumstances affecting the voyage, obviously involves a considerably greater risk than could have been anticipated when the insurance was effected.

Where the Assured becomes aware that the Master without his consent undertakes a voyage outside the trading limits, he shall inform the Insurer hereof without delay.

3. On receipt on notice, the Insurer must in cases provided for in subsect. 2, without undue delay inform the Assured on what conditions he is prepared to assume the risk for the voyage. Where the Assured fails to give notice as mentioned above, the Insurer is not liable for damage sustained outside the permitted trading area.

Damage to a ship that has undertaken a voyage of the nature referred to here, shall be considered to have been sustained during such voyage unless the Assured proves that the damage was sustained at some other time or it is obvious that it cannot have arisen outside the permitted trading area.

## **SAFETY REGULATIONS, SEAWORTHINESS AND CAUSING INSURANCE LOSSES**

### **§ 12**

#### ***Safety regulations***

1. The design of the ship shall be classed and with regard to equipment, outfit, upkeep, crew, loading and ballasting the ship must be seaworthy and provided with the necessary documents and must furthermore comply both with the regulations issued by supervisory authorities or the classification society and with the requirements specified by the Insurer when the insurance was effected.

The Assured shall at the request of the Insurer separately send for the supervisory authority or the classification society for survey when such is deemed necessary with regard to the ship's safety.

2. Fuel and lubricating oils shall be of at least the quality that is prescribed by the engine manufacturer. The ship must have on board a sufficient supply of fuel for the intended voyage, duly considering that on account of weather conditions the voyage may last longer than is normally estimated. The insurer is not liable for costs caused by negligence in this respect.

3. Inflammable, explosive, corrosive or otherwise dangerous goods must be handled and carried only in a safe manner with regard to applicable safety regulations for such cargo. Deck cargo must be carried only in such a quantity and stowed in such a manner that the ship is fully seaworthy in all respects.

Cargo having a tendency to shift must not be carried in bulk unless fully satisfactory arrangements have been made in order to prevent shifting.

4. The Insurer is entitled to check, at any time during the period of insurance, by a survey of his own that the requirements and provisions set out under subsects. 1 and 3 are complied with. The Insurer is further entitled at any time to get access to all ship's documents issued by the supervisory authority or the classification society. In the latter case the Assured must give approval to the classification society.

5. In cases of increase of the risk the Insurer is entitled to give such safety directions as are conducive to averting or minimizing a damage that may arise in consequence of the increase of the risk.

6. Where directions, the observance of which would be conducive to averting or minimizing damage, are disregarded by the Assured, the Insurer is liable only if and to such extent as it can be assumed that the damage would have occurred even if the directions had been followed. Where it appears from the circumstances that such non observance cannot be charged against the person whose duty it was to ensure that the directions were followed the non-observance has no effect upon the Insurer's liability.

§ 13

***Unseaworthiness***

The Insurer is not liable for loss that is a consequence of the ship not having been in a seaworthy condition provided the Assured was or ought to have been aware of the ship's defects at such a time that it would have been possible for him to intervene.

The Insurer shall demonstrate that the ship was not in seaworthy condition.

The Assured shall demonstrate that he neither had nor should have had knowledge about the inadequate seaworthiness of the ship at such point in time that he would have been able to intervene and also show that it is probable that the inadequate seaworthiness was not connected to the casualty.

§ 14

***Effect of willfulness or negligence***

The Insurer is not liable for damage caused by the Assured willfully or by gross negligence.

Willful misconduct or negligence by the Master, a member of the crew, other person in the ship's service or other Part-owner of the ship than the Managing Owner cannot, however, be pleaded by the Insurer for exemption from or reduction in liability.

## Premiums

§ 15

***Premium***

1. The premium shall be paid in advance for the agreed period or periods of which the parties have agreed upon. Where the payment of the premium is not effected without delay, the Insurer is free from liability

2. Where there is a delay in the payment of this premium, the Insurer is entitled to cancel the contract according to § 22.

3. Where the insurance terminates prematurely, the Insurer is entitled to such part of the premium as corresponds to the time during which the ship had been covered. Any exceeding part of the premium shall be refunded. However, if the Insurer has incurred or will incur a payment in excess of double the annual premium he is entitled to be credited the whole of the annual premium.

4. Where the insurance is prolonged after termination of the insurance period according to § 4:1, the Insurer is entitled to premium for the prolonged time, calculated pro rata part of the annual premium.

5. Where there is an increase of the risk during the insurance period for which the Insurer accepts responsibility, he is entitled to an additional premium.

6. Where the Insurer settles a claim for total loss he is entitled to the whole premium agreed.

7. Reduction of the premium for time when the ship is laid up is not admitted.

## Certificate of insurance

§ 16

***Certificate of insurance contract***

The Insurer shall issue a certificate of the effected insurance contract. The contract is held to be approved unless objections against the contents of the certificate are made without undue delay.

## **Increase of risk and reasons for cancellation**

### § 17

#### ***Deviation from trading area***

Where the Master, with the consent of the Assured, deviates from the trading area stated in the insurance contract or which must be considered as anticipated, the Insurer's liability ceases. The same applies where the Assured has not given the Master proper instructions concerning said trading area.

The first paragraph does not apply when the deviation takes place on account of a casualty covered by the insurance, or for the purpose of preventing personal injury or damage to property under such circumstances that the measures can be considered justifiable. If the ship does not return as soon as possible to the agreed trading area, the Insurer is exempted from liability for damage that arises in such case.

Where the Insurer's liability has ceased on account of the stipulations in the first or second paragraph but the ship returns to the agreed trading area or proper route, the Insurer is liable for a casualty occurring thereafter but only to such extent as the deviation has been without importance for the casualty or for the extent of the damage.

### § 18

#### ***Increase of risk with Assured's consent***

Where through the action of the Assured or with his consent, the prerequisites of the insurance contract are altered in such a manner that the Insurer's risk is increased in excess of what the Insurer must have taken into account when effecting the insurance, he is exempted from liability if it can be assumed that on such altered basis he would not have accepted the insurance at all. Where it can be assumed that the Insurer might have accepted the insurance but would have required a higher premium or stipulated other conditions than those included in the insurance contract, the Insurer shall be liable for a casualty, only if it is proved that the increase of the risk was without importance for the casualty or for the extent of the damage.

### § 19

#### ***Increase of risk without the Assured's consent***

Where, without the Assured's action or consent, such circumstances arise that the risk is increased as mentioned in § 18 and the Assured without reasonable cause has omitted to inform the Insurer thereof, the stipulations in § 18 shall apply.

### § 20

#### ***Demand for exemption from liability in the case of increased risk***

Where the Insurer becomes aware that the risk has increased, he must inform the Assured without undue delay if and to what extent he wishes to be exempted from liability. Where this is not done he cannot later demand such exemption.

### § 21

#### ***Increase of risk irrelevant in certain cases***

An increase of risk does not affect the Insurer's liability where the circumstances that have been altered have been reinstated or where the increase of the risk has otherwise ceased to be of importance.

The same applies where the action causing the increase was intended to prevent personal injury or damage to property and was taken under such circumstances that the action must be considered justifiable.

### § 22

#### ***Grounds for termination***

The Insurer may cancel the insurance

1. immediately:

- a) where the Assured has willfully caused or tried to cause a casualty or has caused a casualty by gross negligence;
- b) where the ship turns out to be of such a weak or unsuitable construction that she cannot be considered seaworthy for such voyages or for carrying such cargoes for which she is employed;
- c) where the ship has become unseaworthy in consequence of a casualty or other cause and the Assured omits to restore her within a reasonable time to a seaworthy condition;
- d) where the ship is requisitioned by government authorities;
- e) where the ship is being used for illegal imports or exports or other illegal purposes and the Assured was or ought to have been aware of the circumstances at such time that it would have been possible for him to intervene;
- f) where the ship with regard to her type, size or draught and the season of the year and other circumstances of importance is being employed in a manner that must be considered to involve a risk different from that which could have been anticipated when the insurance was effected.
- g) where a safety regulation of major importance has been disregarded willfully or by gross negligence by the Assured or by any person responsible for the compliance of said regulation on his behalf and where it can be presumed that given regulations will be disregarded also in the future;

2. after 14 days:

- a) where the Assured on effecting the insurance has given incorrect information of circumstances of importance to the Insurer which the Assured did not realize or ought not to have realized to be incorrect. The Insurer shall give notice of cancellation without undue delay when he has become aware of the incorrect information;
- b) where in a manner other than stated above in this section, the Insurer's risk is increased through an act of the Assured or with his consent in excess of what must have been presumed by the Insurer when effecting the insurance contract;
- c) where the Assured has not paid the premium in due time and has not brought the insurance into force through payment of the premium prior to the cancellation;
- d) where, in cases as stipulated in § 17, the ship when the insurance again attaches is in a substantially inferior condition than at the time of the suspension of the insurance;
- e) when the Assured has on repeated occasions failed to provide the Insurer with such notice of journeys outside the trading area as referred to in § 9 and such circumstances do not exist that a deviation from § 17:2 may be deemed justified; and
- f) upon the change of managers.

Where notice of cancellation has been given for reasons other than nonpayment of premium and should the insurance cease while the ship is at sea, the insurance, however, remains in force until the ship has anchored or moored in customary manner in the first port and during her stay on the day of arrival. Such prolongation of the insurance cover is maximized to seven days (see § 4:1).

### **Damage and adjusting of claims**

§ 23

#### ***Action in the event of a casualty***

1. Where a casualty is apprehended or has occurred the Assured must as promptly as possible inform the Insurer thereof and at the same time to the best of his ability undertake such measures as the circumstances call for in order to avert and minimize any damage and to

protect the rights of the Insurer.

It is the duty of the Assured to comply as far as possible with any directions given by the Insurer on account of the casualty.

In the event of a casualty, that may be indemnified by a guarantee or other contract, the Assured is under an obligation to demand payment under such contract.

2. The Assured must as soon as possible notify the Insurer if a third party makes a claim for damages that may result in liability for the Insurer. Where the Assured agrees to such a claim without the Insurer's consent, the Assured is entitled to remuneration only to such extent as the claim was legally founded and the amount was reasonable.

3. The Assured must instruct the Master to notify him as soon as possible of any casualty which has or might have occurred and further, in case of urgency, to inform the Insurer or the Insurer's nearest agent direct and in the quickest way.

The Insurer may give the Assured or, in case of urgency, the Master instructions how to proceed in case of average. The Assured and the Master must carefully follow the instructions of the Insurer but, pending receipt of instructions, they have themselves to take such steps as required by the circumstances in order to save or preserve the ship, to prevent further damage and to protect the rights of the Insurer.

4. Where the Assured either willfully or by gross negligence disregards his above mentioned duties and it can be assumed that this has been to the detriment of the Insurer, the latter is entitled to a reasonable proportionate reduction of the amount of compensation that otherwise would have been payable or to full exemption from liability.

5. Where the ship has sustained damage that can be assumed to be covered by the insurance, the damage must be surveyed as soon as possible in such a manner as the Insurer may direct. Where circumstances do not permit such directions being obtained, the Master must, if the damage is of importance, arrange official survey or otherwise have the damage surveyed in a customary manner.

At the survey the cause of the damage shall as far as possible be ascertained and also the time of its occurrence, its extent and the most suitable method of repairs and the cost thereof.

Damage caused to the ship by a third party shall, if possible, be surveyed jointly with a representative for him. The same applies to damage which the insured ship has caused to a third party.

#### § 24

##### **Total loss**

There is a total loss:

1. where the ship is an actual total loss;
2. a) where the ship is missing and three months have elapsed without the ship making contact;  
b) where the ship has been abandoned by the crew in the open sea and has not been recovered within three months thereafter; if the ship has been observed after the abandonment the time is calculated from the day on which she was last seen;
3. where the ship has sustained an average and cannot be salvaged;
4. where the ship is destroyed with regard to her intrinsic nature and cannot be repaired;
5. where the Assured has been deprived of the ship by arrest, owing to a third party claim or by similar action on account of a casualty for which the Insurer is responsible and a final decision that the ship is to be released has not been taken within six months from the day of the action;
6. where compensation as for total loss can be claimed according to § 26.

Where in the cases mentioned under 2 and 5 above it is manifest already before the expiry of the time limit stated therein that the Assured will not recover the ship, he is entitled to an immediate recovery as for a total loss. If the said period has expired and a claim for total loss has been lodged, the Insurer may not repudiate the claim by pleading that the ship has been recovered or released at a later date.

§ 25

**Constructive total loss (unsalved ship)**

Where the ship has met with a casualty and, without being attributable to the Assured, the salvage of the ship has not commenced within six months or has been completed within twelve months from the day when the Insurer was informed about the casualty or where attempts to salve her have been previously abandoned, a case of total loss shall be considered to exist. Where ice conditions have prevented the salvage operation, the time limit is extended correspondingly.

The Insurer is entitled to attempt to salve the ship at his own expense and responsibility. The Assured must in such a case do what may be expected of him to enable the Insurer to effect the salvage.

§ 26

**Constructive total loss**

1. The Assured is entitled to recover as for total loss (constructive total loss), when the ship has so extensive damage due to average that the repair costs amount to at least 80 per cent of the agreed insured value of the ship or of the corresponding full market value of the ship in undamaged condition at the time the insurance was taken out if this value exceeds the agreed insurance value.-

When deciding whether the Assured is entitled to recover for constructive total loss, such unrepaired average damage are also to be taken into consideration, as have occurred and have been reported to the Insurers concerned and surveyed by them in the course of the last three years prior to the casualty giving rise to the request for recovery.

In the cost of repairs are included all costs of removal to the place of repair with the exception of salvage remuneration.

2. The right to claim constructive total loss must be established by such survey as mentioned in § 23:5, and by invitation of tenders.

3. Where it is shown in the survey report that the ship has sustained so extensive damage that she cannot be repaired or is not worth repairing, i.e. has been condemned, the Insurer is, nevertheless, entitled to decide that the ship be removed to such place where, in his opinion, tenders for repairs are obtainable, by which a constructive total loss may be avoided. If such a tender is obtained, the survey is not binding on the Insurer. The costs of removal shall in such a case be payable by the Insurer and is not included in the cost of repairs.

Where damage is sustained during the removal, this is to be included in the damage caused by the casualty.

Where the removal has not commenced within six months from the day when the Insurer was informed about the casualty, the condemnation remains valid.

§ 27

**Indemnity of total loss**

1. Where the Assured is entitled to recover for actual or constructive total loss, the compensation to be paid is the amount insured. No deduction is made for unrepaired damage due to previous casualties.

Where the Insurer pays compensation for total loss, he is subrogated to the Assured's right to the ship. Where the Insurer does not want to take over the ship, he is entitled to deduct the remaining value of the ship from the amount to be paid.

2. In spite of the Assured being entitled to recover for constructive total loss, he is instead free to claim compensation according to the stipulations for partial loss. However, in such a case the Insurer's liability is limited to the amount insured less the remaining value of the ship.

§ 28

**Time, place and manner of repair**

1. Before the Assured arranges for repairs of damage for which the Insurer is liable, he must, whenever possible, consult the Insurer with regard to time and place of the repairs and the

methods to be applied.

2. The Insurer may request tenders to be invited from those shipyards that he considers suitable.

3. Where complete repairs of the damage would involve unreasonable costs and the ship can be put into a fully seaworthy condition and retain her class by less extensive repairs or by the use of other material than of the original kind, the Insurer's liability is limited to the cost of such repairs. Where repairs in the said manner result in a reduction of the ship's value the Insurer is liable therefore.

The costs of renewal of steel and other metal parts of the hull or of the machinery is compensated only if the articles involved cannot be faired, welded, joined, cut or otherwise be repaired more cheaply if renewal is required by classification society or supervising authority.

4. Where repairs of a damage are carried out in a more elaborate manner or with more expensive materials than required for restoring the ship to the same condition as prior to the casualty, the repair costs are to be compensated by the Insurer only after a reasonable deduction for the increase in costs caused thereby.

5. Where the repairs are deferred without the Insurer's consent, he is not liable for any increase of the repair costs that may arise therefrom.

#### § 29

##### ***Provisional repair***

The Insurer reimburses the costs of temporary repairs if permanent repairs cannot be effected at the place where the ship is lying and the temporary repairs are required for completion of the voyage or for removal of the ship to the place where repairs can be effected.

In other cases the Insurer reimburses half the costs of temporary repairs for a recoverable casualty. When temporary repairs are shown to result in saved costs for the Insurer, compensation is paid out up to the amount saved or with the repair costs whichever amount is the most favourable to the Assured.

#### § 30

##### ***Moving the ship***

The Insurer will compensate the costs for the deviation of the ship to a place where the repair can be made, including wages and food for the crew on board and also fuel, engine supplies and similar direct costs for the operation of the ship, the moving costs following completion of the repair will not be compensated except in the cases referred to in § 6 b) or c).

#### § 31

##### ***Division of costs in conjunction with repair***

Where expenses have been incurred which are common to repair work for which the Insurer is liable and to work which is not covered by the insurance, these expenses are to be divided with regard to the time required if the two classes of work had been carried out separately. General expenses not depending on the length of the repair time are to be divided equally.

Expenses as mentioned in the first paragraph, being directly caused by a casualty are however, reimbursed in full by the Insurer, with the exception that the expenses shall be divided as mentioned in the first paragraph when simultaneously repair work for the account of the Assured is carried out regarding seaworthiness or being requested by the supervising authority or classification society.

#### § 32

##### ***Unrepaired damage***

Compensation for unrepaired damage shall not be payable, unless the Insurer has agreed the repair is not effected or unless the Assured proves that on the sale of the ship he has suffered a loss on account of the damage. The compensation is, however, limited to such repair which is requested by the supervising authority or the ship's classification society.

Thus compensation for unrepaired damage is not payable, if the ship is sold for breaking up or for other purpose, for which the damage is of no consequence.

§ 33

**Unknown damage**

1a) Damage that is unknown at the commencement of the insurance period and that has not given cause to any new damage shall be referable to the insurance that was applicable when the damage occurred.

1b) If it cannot be determined when the unknown damage occurred, the damage is referred to the insurance that applied when the damage was discovered.

2a) Damage that is unknown at the commencement of the insurance period and that gives cause to new damage shall be referable to the insurance that applied when the new damage occurred.

2b) If it cannot be determined when the new damage occurred, the damage is referable to the insurance that applied when the new damage was discovered.

§ 34

**Deductible**

1. When settling claims for particular damage to the ship for each accident such deduction is made which the parties have agreed upon.

Damage due to heavy weather and sustained during the period between departure from one port to and arrival at the next port shall be considered as one casualty.

Costs in connection with ascertaining the damage and settling the claim as well as damage through measures to avert or minimize the loss according to § 6 g) are allowed without deductible.

2. When settling claims for damages to a third party, for each accident such deduction is made which the parties have agreed upon.

§ 35

**Demand for compensation and burden of proof**

When the Assured claims compensation on account of a casualty, he must prove that the damage is allowable and also prove its extent.

It is the duty of the Assured to provide the Insurer as soon as possible with all the documents and information which may be of importance for ascertaining the Insurer's liability and which can reasonably be obtained. Furthermore, the Insurer or the person nominated by the Insurer shall always be afforded access to the ship in order to conduct the supplementary inspections and examinations that the Insurer considers necessary for assessment of the case.

§ 36

**Time limits**

To avoid losing rights, an Assured, who intends to claim compensation, must notify the Insurer of his claim within six months after becoming aware that there is a claim for compensation. All rights to compensation become void after ten years from the date when the claim arose, whether or not the Assured had by then become aware of his claim.

Where the Insurer has requested the Assured in writing to submit his claim to an Average Adjuster for decision within a certain time not less than six months from receipt of the request, and the Assured has not complied with the request, he loses all rights to compensation.

§ 37

**Advance payments**

The Assured must as soon as possible inform the Insurer about the approximate amount of impending large expenses and further supply him with necessary information for the calculation of an advance payment.

The Insurer is entitled to make a payment on account to the Assured up to the full amount of his estimated liability.

When the Assured has informed the Insurer as to when and with what amount a certain large

average expense is due for payment and when also the amount of the Insurer's minimum liability has been established, the Assured is entitled to demand a reasonable advance payment of the estimated compensation. The Insurer must thereby pay in advance to the Assured for expenses which have been paid by the Assured and which fall within the calculated compensation. Other expenses within the compensation which have not yet been paid by the Assured are for the Insurer to pay out in advance at his own discretion either directly to the Assured or to the third party which has a claim on the Assured. Where either of the parties so demands, the calculation of the payment on account shall be effected by a Swedish Average Adjuster.

#### § 38

##### **Payment of compensation**

1. When the Insurer has received the required documents and information he must submit his calculation of compensation to the Assured within fourteen days if the compensation is for total loss, and otherwise three months thereafter. If the Insurer and the Assured agree on the compensation, same shall be payable within one month thereafter; otherwise subsect. 2 will apply.

2. Where either party so desires, the compensation shall be determined by a Swedish Average Adjuster to whom the required documents and information must be submitted as soon as possible. The compensation is in such cases payable within fourteen days after the average statement has acquired legal force, or, if appealed against, within one month after the court's judgment has acquired legal force.

3. The Insurer is not obliged to pay directly to the Assured other or greater part or the finally agreed or otherwise determined compensation than what corresponds to the part of the damage already paid by the Assured. The Insurer is entitled to pay the compensation for such part of the damage not yet having been paid by the Assured directly to the third party, which in accordance with the statement of claim has an accepted claim on the Assured.

4. The Insurer is entitled to set off any claim due from the Assured against such advance payment, compensation or refund of premium as the Assured is entitled to receive from the Insurer.

#### § 39

##### **Ship mortgage**

Where the insured ship is mortgaged to a third party, the insurance is valid also for the benefit of the Mortgagee but does not in relation to the Insurer provide more extensive rights for the Mortgagee than for the Assured.

#### § 40

##### **Disputes regarding liability to compensate**

If a dispute arises concerning the indemnity obligation of the Assured as a result of this contact, the dispute shall be determined according to Swedish Law by arbitration with the Swedish Average Adjuster as a sole arbitrator.

The procedure shall correspond with the procedure laid down by law for the Average Adjuster. Necessary documents and information shall be handed over as soon as possible to the Average Adjuster.

Expenses of average adjustment shall be indemnified by the Insurer, unless the Assured's claim for indemnity is manifestly unfounded.

The parties are entitled to institute proceedings of appeal against the arbitral award in the same way and in the same period that an average adjustment according to law may be appealed against.

If the average adjustment is appealed against, a party is entitled to demand that the other party provides security for the litigation costs that the party may be obligated to pay. A party shall make any such request on the first occasion that he takes a step in the appeal proceedings.

§ 41

***The Insurer's liability and measures regarding third parties***

Even though compensation for loss is claimable from a third party by way of damages or by way of contribution in General Average, the Assured is entitled, provided he has undertaken all measures necessary for the preservation of the rights against third parties or for the defence against claims by third parties, to receive from the Insurer such compensation as is payable according to the contract of insurance.

2. Where the Insurer so requires, the Assured has to take legal action in his own name, but on behalf of and at the expense of the Insurer in cases concerning claims for damages arising out of the casualty.

3. Where the Assured at the request of or with the consent of the Insurer takes steps against third parties for recovery of damages for which the Insurer is liable, the latter shall make good the expenses arising therefrom. Where such steps also concern losses for which the Insurer is not liable, he has only to make good such expenses as are caused by the action in respect of the losses for which he is liable.

Where the Assured takes steps as stated above without the Insurer's consent, the Insurer is liable for expenses arising therefrom only to such extent as the steps have benefited the Insurer.

4. Where the Assured at the request of or with the consent of the Insurer has instituted proceedings against a third party, he cannot refuse to accept such amicable settlement of the case which is satisfactory to the Insurer, provided the Assured thereby is not placed in a worse position than if compensation was paid according to the insurance conditions. Where the Assured refuses to accept such an amicable settlement the Insurer compensates neither the reduction of the remuneration from the third party nor the extra expenses arising from the refusal.

5. It is the duty of the Assured to supply, without delay, the Insurer with all documents and evidence that may be of significance as regards the insurance case and also make all relevant persons available to be heard and to give testimony as witnesses in the case. The Insurer or the person nominated by the Insurer shall always be afforded access to the ship in order to undertake the inspections and examinations that the Insurer considers necessary to deal with the insurance case.

§ 42

***Provision of security for salvage charges***

Liability for the Insurer to provide security to release or prevent arrest of the ship, property or assets of the Assured is existing only if the Assured can show that the claim causing the arrest is covered by the liability of the Insurer under the insurance. When such liability has been shown to exist the Insurer has reasonable time at his disposal to provide satisfactory security. When the Insurer provides security without the duty thereto the Assured shall reimburse any cost or loss arising therefrom.

§ 43

***Subrogation rights***

Where the Insurer pays compensation to the Assured, he is subrogated to the Assured's rights against third parties to such extent as he indemnifies the Assured. The Insurer is entitled to collect the recovery amount arising from such recourse claim.

Where the Insurer recovers from a third party a net amount in excess of the compensation paid by him to the Assured with addition of interest, the Assured is entitled to the excess.

Where the Assured by agreement which cannot be considered as customary in the particular case has relinquished wholly or partly his rights against a third party, the Insurer is exempted from liability to a corresponding extent. The Insurer has a right of subrogation against the Assured for compensation that the Insurer has paid on behalf of the Assured outside the scope of the insurance cover.

## Insurance documents

§ 44

### ***Insurance documents on board***

The Assured shall see to it that the insurance conditions as well as instructions and directions issued by the Insurer and also a list of average agents are available on board and also request Master to carefully follow instructions and directions given.

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