

# BRITISH COLUMBIA BUILDERS' RISKS CLAUSES (1989)

## GENERAL SECTION

1/1/89

1. This policy contains warranties and general conditions none of which are to be interpreted as suspensive conditions. The Underwriters have agreed to accept the risk of insuring the Vessel on the condition precedent that the Assured will comply strictly and literally with these warranties and conditions. If the Assured breaches any of these warranties or conditions, the Underwriters at their option will not pay any claim arising thereafter, regardless of whether or not such breach is causative or in any way connected to such claim.

### 2. ASSURED

This policy insures \_\_\_\_\_

(Herein referred to as the "Assured") for account of themselves and/or any owner or owners of the Vessel as their interest may appear at the time of the happening of a loss.

### 3. SUBJECT MATTER

The subject matter of this insurance (hereinafter referred to as the Vessel) is the Hull, Engines, Boilers, Machinery, Appurtenances, etc. (including plans, patterns, moulds, etc.) Boats and other Furniture and Fixtures and all material belonging to and/or allocated to \_\_\_\_\_

under construction at \_\_\_\_\_

This policy does not cover any materials, furniture and equipment for the Vessel furnished by the owner, the cost of which is not included in the construction contract price, but permission is granted to effect additional insurance covering the value of such interests.

### 4. PREMIUM

Underwriters to be paid in consideration of this insurance \_\_\_\_\_ Dollars being at the rate of \_\_\_\_\_ per cent.

### 5. CHANGE OF INTEREST

It is agreed that any changes of interest in the vessel hereby insured shall not affect the validity of this policy.

### 6. AMOUNT INSURED

In the event of loss prior to completion of the vessel, Underwriters liability hereunder shall not exceed the actual value, if any, of the Vessel at the commencement of the risk plus the cost of work and materials subsequently incorporated into the vessel to the time of such loss, less such deductible as is stated within the policy, but in no event to exceed the completed contract price of \_\_\_\_\_ Dollars.

In the event of loss, the Underwriters shall not be liable for a greater proportion thereof than the amount of this insurance bears to the completed contract price.

### 7. OTHER INSURANCE

In the event there is other valid insurance covering the same loss, this insurance shall not pay more than its proportion of the total of all insurance.

### 8. DEDUCTIBLE

The sum of \$ \_\_\_\_\_ shall be deducted from the total of all claims arising out of one accident or occurrence. This paragraph shall not apply to a claim for total or constructive total loss of the Vessel.

### 9. DURATION OF RISK

Commencing \_\_\_\_\_

and ending \_\_\_\_\_

or until delivery at \_\_\_\_\_

if delivered at an earlier date.

In the event of such delivery not being effected by \_\_\_\_\_

this policy may be extended at \_\_\_\_\_ monthly additional premium provided notice of the extension be given to Underwriters prior to \_\_\_\_\_

In no case shall this insurance extend beyond delivery of the vessel.

### 10. SUBROGATION

It is agreed that upon payment of any loss, damage, or expense the Underwriters are to be subrogated to all the rights of the Assured to the extent of such payment, and the Assured will cooperate fully in all subrogated proceedings brought by Underwriters.

Unless the Assured and Underwriters shall have otherwise agreed in writing, the Assured and Underwriters shall participate jointly in recoveries, with net recoveries (excluding interest comprised therein) made against any claim **pro rated** between the respective interests of the Assured and Underwriters.

Interest comprised in net recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by Underwriters and the dates when such payments were made.

### 11. ASSIGNMENT

It is agreed that no assignment of any interest in this policy or in any moneys which may be or become payable thereunder is to be binding on or recognized by the Underwriters unless a dated notice of such assignment or interest signed by the Assured and (in the case of subsequent assignment) by the assignor be endorsed on this policy and the policy with such endorsement being produced before payment of any claim or return of premium thereunder, but nothing in this clause is to have effect as an agreement by the Underwriters to a sale or transfer to new management.

### 12. CANCELLATION

If payment of premium is not made by the Assured within thirty (30) days after attachment of the insurance, or, in the event the Underwriters shall have agreed to accept deferred payments, if any payment of any premium is not made on the day agreed, this policy may be cancelled at any time thereafter by the Underwriters giving to the Assured named herein, and to third party payee or payees (if any) named in the policy, five (5) days' notice of such cancellation. Such notice may be given by the Underwriters or on their behalf by an authorized Agent or by the Agent or Broker effecting this insurance. Such cancellation shall be without prejudice to the premiums earned and due for the period the policy was in force. In event of Total or Constructive Total Loss occurring prior to cancellation, full annual premium shall be deemed earned.

### 13. BRITISH COLUMBIA LAW

Warranted to be subject to British Columbia Law and Usage as to Liability for and settlement of any and all claims.

### 14. NOTICE

The Assured must give the Underwriters immediate notice upon becoming aware of the happening of any event which may lead to a claim under this policy.

### 15. SUIT TIME LIMITATION

It is a condition of this Policy that no suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within twelve months next after the time a cause of action for the loss accrues. Provided, however, that if by the laws of the province within which this policy is issued such limitation is invalid, then any such claim shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted, by the laws of such province, to be fixed therein.

## HULL SECTION

### 16. HULL RISKS

This insurance covers all risks of physical loss or damage to the Vessel, from any external cause, while under construction and/or fitting out, and/or trial trips, including materials on the premises of the Assured, and while in transit (within 100 miles of the construction site) to and from the Vessel wherever she may be.

### 17. SEA TRIALS

Warranted all trials shall be carried out within a radius of 100 miles of the construction site.

### 18. FAILURE TO LAUNCH

In the case of failure to launch, Underwriters shall bear, up to the amount insured hereunder, their proportion of all necessary expenses incurred in completing the launch.

### 19. NEW FOR OLD

General and Particular Average shall be payable without deduction, new for old.

### 20. TOTAL LOSS

There shall be no recovery for a Constructive Total Loss under this Policy unless the expense of recovering and restoring the Vessel to the stage of her construction at time of loss would exceed her value at such stage of construction (which value shall be taken to be the cost of labour actually expended by the Builder in the construction of the Vessel and material actually incorporated therein at the time of loss, including accrued overhead and profit on such labour and material, not exceeding the Agreed Value). In making this determination expenses incurred prior to tender of abandonment shall not be considered if such are to be claimed separately under the Sue and Labour clause.

In ascertaining whether the Vessel is a constructive total loss, the completed contract price shall be taken as the repaired value and nothing in respect of the damaged or breakup value of the Vessel or wreck shall be taken into account. No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed the completed contract price.

### 21. UNREPAIRED DAMAGE

In no case shall the Underwriters be liable for unrepaired damage in addition to a subsequent Total Loss sustained during the period covered by this Policy, or any extension thereof.

### 22. SUE AND LABOUR

In case of any Loss or Misfortune, it shall be lawful and necessary for the Assured, their Factors, Servants and Assigns, to sue, labour and travel for, in and about the defense, safeguarding and recovery of the Vessel, or any part thereof, without prejudice to this insurance, to the charges whereof Underwriters will contribute their proportion as provided below. It is expressly declared and agreed that no acts of Underwriters or Assured in recovering, saving or preserving the Vessel shall be considered as a waiver or acceptance of abandonment.

In the event of expenses being incurred pursuant to the Sue and Labour Clause, the liability under this policy shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the Vessel as stated herein, or to the sound value of the Vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where Underwriters have admitted a claim for total loss and property insured by this policy is saved, the foregoing provisions shall not apply unless the expenses of suing and labouring exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

Where a claim for total loss of the Vessel is admitted under this policy and expenses have been reasonably incurred in salving or attempting to save the Vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this policy shall bear its **pro rata** share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the Vessel; but if the Vessel be insured for less than its sound value at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

### 23. GENERAL AVERAGE AND SALVAGE

General Average and Salvage to be adjusted according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to York-Antwerp Rules.

When the Vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the Vessel at the first

When the contributory value of the Vessel is greater than the valuation herein, the liability of these Underwriters for General Average contribution (except in respect to amount made good to the Vessel) or Salvage shall not

exceed that proportion of the total contribution due from the Vessel that port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only. If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

the amount insured hereunder bears to the contributory value; and if because of damage for which these Underwriters are liable as Particular Average the value of the Vessel has been reduced for the purpose of contribution, the amount of the Particular Average loss under this policy shall be deducted from the amount insured hereunder and these Underwriters shall be liable only for the proportion which such net amount bears to the contributory value.

## LIABILITY SECTION

### 24. COLLISION LIABILITY

If the Vessel hereby insured shall come into collision with any other vessel and the Assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision for

- (i) loss of or damage to any other vessel or property on any other vessel;
- (ii) delay to or loss of use of any such other vessel or property thereon, or;
- (iii) general average of, salvage of, or salvage under contract of, any such other vessel or property thereon;

the Underwriters will pay the Assured such proportion of such sum or sums so paid as their respective subscriptions hereto bear to the completed value of the Vessel hereby insured, provided always that their liability in respect of any one such collision shall not exceed their proportionate part of the completed value of the Vessel hereby insured, and in cases in which, with the prior consent in writing of the Underwriters, the liability of the Vessel has been contested or proceedings have been taken to limit the liability, they will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay; but when both vessels are to blame, then unless the liability of the Owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross liabilities as if the Owners of each vessel had been compelled to pay to the Owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision.

Provided always that this clause shall in no case extend or be deemed to extend to any sum which the Assured may become liable to pay or shall pay for or in respect of:

- (a) removal or disposal, under statutory powers or otherwise, of obstructions, wrecks, cargoes or any other thing whatsoever;
- (b) any real or personal property or thing whatsoever except other vessels or property on other vessels;
- (c) pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured Vessel is in collision or property on such other vessels);
- (d) the cargo or the property on or the engagements of the insured Vessel;
- (e) loss of life, personal injury or illness.

Should the Vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this Policy as they would have were the other vessel entirely the property of Owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to arbitration at Vancouver, British Columbia, before a sole arbitrator to be agreed upon between the majority (in amount) of the Underwriters and the Assured, or if they cannot agree on an arbitrator, then each shall appoint an arbitrator, and the two arbitrators so

chosen shall choose a third arbitrator before entering upon the reference, and the decision of the sole arbitrator or of any two of such three arbitrators appointed as above, shall be final and binding. The arbitration shall be conducted pursuant to the **Commercial Arbitration Act** of British Columbia.

### 25. PROTECTION AND INDEMNITY

It is further agreed that if the Assured by reason of its interest in the Vessel or the Surety for the Assured in consequence of its undertaking shall become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and/or expenses arising from or occasioned by any of the following matters or things during the currency of this policy, that is to say:

- (a) Loss of or damage to any other ship or goods, merchandise, freight, or other things or interests whatsoever, on board such other ship, caused promimately or otherwise by the Vessel insured insofar as the same is not covered by the collision liability clause set out above;
- (b) Loss or damage to any goods, merchandise, freight, or other things or interest whatsoever, other than as aforesaid (not being builders' gear or material or cargo on the insured Vessel), whether on board the insured Vessel or not, which may arise from any cause whatsoever;
- (c) Loss of or damage to any harbour, dock (graving or otherwise), slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraphic cable or other fixed or movable thing whatsoever, or to any goods or property in or on the same, howsoever caused;
- (d) Loss of life, personal injury, illness or life salvage;
- (e) Any attempted or actual raising, removal, or destruction of the wreck of the insured ship or the cargo thereof, or any neglect or failure to raise, remove, or destroy the same.
- (f) Any sum or sums for which the Assured may become Liable or incur from causes not hereinbefore specified, but which would be covered by the Canadian (Pacific) Protection and Indemnity Clauses, unamended.

The Underwriters will pay the Assured such proportions of such sum or sums so paid, or which may be required to indemnify the Assured for such loss, as their respective subscriptions bear to the completed contract price of the ship hereby insured, provided always that the amount recoverable hereunder in respect of any one accident or series of accidents shall not exceed their proportionate part of the completed value of the vessel hereby insured, and where the liability of the Assured has been contested with the consent in writing of a majority (in amount) of the Underwriters on the vessel hereby insured, the Underwriters will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

### 26. CO-OPERATION BY ASSURED

The Assured will co-operate fully with Underwriters in the defense of all claims arising from alleged liability of the Assured, and the Assured will not admit liability or incur any expense for which the Underwriters may be liable, without the written approval of the Underwriters.

## EXCLUSIONS

The following exclusions shall be paramount and shall supercede and nullify any contrary provisions in the policy. This insurance shall not cover any losses arising directly or indirectly from the causes described below:

- (a) Notwithstanding anything to the contrary contained in these clauses, warranted free of capture, seizure, arrest, restraint or detention, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the Vessel concerned or in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.
- (b) Warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, piracy, strikes, lockouts, political or labour disturbances, civil commotions, military or usurped power.
- (c) Warranted free from loss, damage, liability or expense arising from any weapon of war employing ionizing radiation, atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (d) Warranted free from loss, damage, liability or expense arising from:
  - (1) the detonation of an explosive;
  - (2) any weapon of war;and caused by any person acting from a political motive.

- (e) Warranted free from liability to any employee of the Assured or in the case of death, to his beneficiaries or others, under any Workers Compensation Acts or similar legislation, order or regulations, where the Assured is required to insure under such compensation provisions.
- (f) Warranted free of any consequential damages or claims for loss through delay however caused, including, but not limited to loss of earnings or use of the Vessel.
- (g) Warranted free from any claims arising from defects in materials, defects in design, failure to comply with specifications, or deliberate, dishonest, fraudulent or criminal acts of the builders.
- (h) Nothing in this policy shall be construed to insure against or cover any loss, damage or expense in connection with docks, shipways, tools or any other property of the shipyard not intended to be incorporated in the vessel, excepting staging, scaffolding and similar temporary construction the value of which is included in the contract price of the vessel and excepting any loss, damage or expense for which Underwriters may be liable under the Protection and Indemnity clauses; provided, nevertheless, that in case of failure to launch, Underwriters shall bear their proportion of all subsequent expenses incurred in completing launch.
- (i) Nothing in this policy shall be construed to insure against punitive damages, or fines or penalties imposed by any level of government, nor for any liability, assumed by the Assured under any contract or agreement unless specifically endorsed hereon.
- (j) Warranted free from any claims arising from earthquakes, volcanoes, or tidal waves.