

# **TMS Cruise Cover**

## **Passenger and Cruise Vessel Business Interruption Insurance**

### **for Seagoing Vessels Insurance Conditions**

1 October 2020



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## § 1 Subject matter of insurance

- 1.1. In the framework of the following provisions, the Insurer shall provide compensation for any business interruption or non-operation damage occurring in the operating business of the Insured as a consequence of voyages of the insured vessel that are not conducted or not fully conducted.
- 1.2. The insurance shall cover, in each case to the extent agreed, the financial interests of the Insured in fulfilment of his contractual travel obligations entered into for the insured vessel, and in the receipt of the income related thereto and, where agreed, also his financial interest in relationship with special customer loyalty measures for future voyages.
- 1.3. The prerequisite for indemnity obligation of the Insurer is that the business interruption is the direct consequence of a risk directly concerning the insured vessel, during the duration of insurance cover, and that the insured shortfall or the insured expenditures are incurred not later than three months after the end of insurance cover.
- 1.4. Cruises for the purposes of the present insurance are all voyages by the insured vessel, regardless of whether the vessel is to call at a destination port, or to make a round trip and return to the starting point, thereby calling on intermediate ports. Cruises start with passengers going on board or embarking, and end with disembarkation of the passengers.

## § 2 Insured business interruption damage

- 2.1. Business interruption damage occurs if the operation of the insured vessel is impaired or is no longer possible due to a damage event covered by its hull insurance or another risk covered by the agreement and, as a result of this, operational profit is lost to the Insured, or the Insured is burdened by costs and expenditures which he is unable to recover or which are not balanced by an economic equivalent.
- 2.2. Depending on the agreed type of cover, the insured business interruption risk comprises either indemnity for loss of operating profit and for current costs (loss of profit insurance) or other additional operating cost to avoid or mitigate loss of earnings (additional cost insurance) and / or special operating expenditure (special expenditure insurance).

In the case of loss of profit insurance, the insured business interruption risk comprises specified income shortfalls due to complete or partial non-conduct or cancellation of cruises, passages or operations of the insured vessel - for cruises this also includes losses due to non-embarkation of passengers who had already started their journey to reach the vessel.

Unless otherwise agreed, these revenues include the travel/ticket prices for the passengers, the expected onboard sales and land excursion revenues for the vessel, and revenues from other onboard services which are not already included in the travel price.

In additional cost insurance, the insured business interruption risk comprises expenditures for isolated costs known in advance, such as charter and replacement costs, in order to conduct the travel of the insured vessel or to replace them with other income by different means without loss of earnings.

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In the special expenditures insurance, the insured business interruption risk comprises to the agreed extent the expenditures for special campaign costs to maintain or regain the market or competitive situation after it has been impaired by non-operation or limited operational capability of the insured vessel.

- 2.3. In all forms of cover, business interruption damage is subject to compensation at most up to the agreed insurance amount. This amount is determined from the number and total of the agreed non-operation and replacement amounts for the respective cover types per day or compensation period.

## § 3 Insurance period and liability period

### 3.1. Insurance period

The insurance begins and ends at the times specified in the policy.

If a cruise or partial passage has already been started for a cruise vessel at the time of the beginning of the insurance period, the insurance period shall start with the subsequent cruise / passage; if a cruise or partial passage has not yet finished at the end of the agreed insurance period, the insurance shall cease with the end of the last cruise / passage which was started within the agreed insurance period.

### 3.2. Liability period

The Insurer shall provide indemnity for a business interruption occurring within the insurance period only to the extent that this is within the agreed indemnification period (liability period) and does not fall within a time deductible of the Insured.

If the liability period is measured in months, 30 calendar days shall be regarded as one month. If the liability period is 12 months, the liability period shall be one full calendar year.

Should a business interruption damage occur before the planned beginning of a voyage of the insured vessel, then the liability period begins with the time of the planned beginning of the voyage of the insured vessel. If the business interruption damage occurs during a voyage, then the liability period begins with the beginning of the business interruption damage.

If a time deductible of the Insured has been agreed, this shall begin with the occurrence of the business interruption damage. If the business interruption damage begins with a delay due to measures to avert and mitigate damage in the meaning of Art. 9.2, the time deductible shall begin at the point in time at which insured business interruption damage would have occurred if such measures had not been taken.

The liability period shall end with the termination of the business interruption triggering the indemnity obligation of the Insurer, or at the latest with the last day of the agreed liability period.

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## § 4 Insured risks

Unless otherwise agreed, the following risks are insured as triggering causes for covered business interruption damage in the meaning of Art. 2 of the present conditions:

- 4.1. Damage to insured vessel
  - 4.1.1. Partial damage to the insured vessel, for which insurance protection is provided under the hull insurance of the insured vessel, but not going beyond the hull conditions set out in the DTV ADS Clauses 2009 or other hull insurance conditions set out in the policy; deductibles and excess amounts (franchises) under the hull insurance shall be disregarded. The risk of total loss or constructive total loss (vessel not worth repairing, not possible to repair, abandon) may be included in insurance on payment of a surcharge.
  - 4.1.2. Non-operation or limited functioning of equipment or facilities on board the insured vessel, or facilities that serve for operation of the vessel, and the non-operation or impairment of which may cause physical harm or substantial discomfort to a not insignificant number of passengers, thus leading to cancellation or reduction in length of a cruise by the Insured.
- 4.2. Health hazards
  - 4.2.1. Ban or restriction on movements of the insured vessel due to quarantine regulations, except in the case of epidemics;
  - 4.2.2. Outbreak of infectious diseases not occurring as epidemics on board, or discovery of their pathogens, or food poisoning on board the insured vessel, provided that this is determined by experts who are not employed by the Insured or in a contractual relationship with the Insured.
  - 4.2.3. Whether or not an incident is defined as an epidemic is determined by the standards of the WHO.
- 4.3. Natural hazards
  - 4.3.1. The following natural hazards are insured without specific agreement, if they directly obstruct the operation or access of the insured vessel from or to an embarkation or disembarkation port or obstruct it to such an extent that starting or continuation of an insured voyage cannot reasonably be expected and the voyage therefore has to be cancelled or shortened:
    - 4.3.1.1. Weather conditions which are exceptionally severe for the season;
    - 4.3.1.2. Snowfall or ice conditions which are exceptionally long-lasting for the season;
    - 4.3.1.3. Landslide; subsidence; earthquake; volcano eruption;
    - 4.3.1.4. Lightning strike.
- 4.4. Technical obstacles to passage and access
  - 4.4.1. The unusability of waterways due to technical obstacles, e.g. sunken vessels, obstructed locks, collapsed bridges, slipped banks, or similar;
  - 4.4.2. The functional impairments to a port or terminal at the place of embarkation or disembarkation of passengers, of a kind that cannot reasonably be foreseen and is unusual, completely preventing the use of the berth/terminal, where no alternative terminal or berth is available.

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- 4.5. Measures taken by authorities
    - 4.5.1. Unforeseen complete or partial closure of a waterway which the insured vessel was planned to use in the framework of the insured voyage, or of a port or terminal, if this prevents the passengers from embarking on or disembarking from the insured vessel, in each case as a result of proper official direction by a competent authority;
    - 4.5.2. Unforeseen complete or partial closure of an airport or a road due to proper official direction by a responsible authority, directly preventing passengers from using the planned embarkation or disembarkation port of the insured vessel;
    - 4.5.3. Imposition of travel or access restrictions by the competent authority within the country in which the passengers or crew are to embark on or disembark from the insured vessel.

## § 5 General conditions of cover

Unless explicitly otherwise regulated in special cases, the following conditions shall apply for insurance cover:

- 5.1. Unrestricted certification by the competent authority that the insured vessel has operational fitness for passenger operation;
- 5.2. Highest class of a classification society, which is a member in the IACS (International Association of Classification Societies);
- 5.3. Operation of the vessel within the trade area stipulated by the Classification Society and the Hull Insurer;
- 5.4. Compliance with all requirements of the ISM Code and the ISPS Code, if they are applicable for the respective vessel.
- 5.5. Existence of P&I insurance, giving cover that is not less than insurance on the basis of the Thomas Miller Specialty P&I insurance conditions, or the existence of another P&I or third-party liability insurance policy accepted by the Insurer in the individual case.

## § 6 Exclusions

- 6.1. There is no insurance cover for damage caused with intent or gross negligence by the Insured.
- 6.2. There is no insurance cover for loss of revenues or for expenditures which are directly or indirectly the result of violation of statutory regulations for passenger vessels or of instructions from responsible government or local authorities.
- 6.3. There is no insurance cover for loss of revenues or for expenditures which are due to cancellations, abandonment or shortening of cruises / passages due to insufficient ticket sales, for any reason whatsoever, or to insufficient fuels or lubricants, or to insolvency or payment inability of the Insured.
- 6.4. There is no insurance cover for loss of revenues or for expenditures if the Insured decides not to resume operations with the vessel following a damage incident.
- 6.5. There is no insurance cover for loss of revenues or for expenditures which are directly or indirectly the consequence of the following circumstances:

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- 6.5.1. War, civil war, revolution, rebellion, uprising, civil commotion or any hostile act against or by a belligerent power;
  - 6.5.2. Mines, torpedoes, bombs, missiles, grenades, explosives, or chemical, biological or electromagnetic or comparable weapons of war;
  - 6.5.3. Arrest, seizure, confiscation, or detainment of the insured vessel by the exercise of sovereign power;
  - 6.5.4. Terrorist acts, sabotage or piracy - except piracy on board the insured vessel;
  - 6.5.5. General terrorist threats, which are not specifically directed against the insured vessel or the Insured;
  - 6.5.6. Effects by radioactive, toxic or explosive substances with contaminating properties;
  - 6.5.7. Strike or industrial dispute;
  - 6.5.8. Delay in delivery of a vessel newbuilding or in return of the insured vessel from maintenance, repair or conversion or any kind of docking;
  - 6.5.9. Delayed delivery or return under charter parties;
  - 6.5.10. Occurrence of infectious diseases or poisoning caused by microorganisms, which are not limited to occurrence on the insured vessel or which, independently of their occurrence on board the insured vessel, are due to local, regional or international epidemics.

Whether or not a disease is defined as an epidemic is defined by the standards of the WHO.

## § 7 Pre-contractual disclosures and information

### 7.1. Pre-contractual disclosure obligation of the Insured

The Insured shall disclose all risk-related circumstances relevant to insurance cover before signing of the contract, and shall give true and complete answers to the questions asked. Risk-related circumstances are all circumstances which are liable to have an influence on the decision of the Insurer to sign the contract at all or to sign it with the agreed content. Any circumstance which is the subject of an explicit or written question by the Insurer is in all cases to be considered risk-related.

If the contract is closed by a representative of the Insured, and if the latter is aware of such risk-related circumstance, the Insured is to be treated as if he had knowledge of the circumstance himself.

### 7.2. In the event of incomplete or incorrect indications, the Insurer may within one month from the time at which he gained knowledge of the undisclosed or incorrectly disclosed circumstance rescind the contract and refuse payment, unless otherwise agreed.

The same shall also apply if disclosure was not made because the Insured was not aware of the circumstance as a result of gross negligence.

If insurance damage has already occurred, the Insurer may not refuse insurance cover if the Insured proves that the incomplete or incorrect indication had no influence on the occurrence of the insurance damage or on the extent of the payment obligation.

### 7.3. If the Insurer continues to be bound by indemnity obligation due to lack of culpability of the Insured or his representative, the Insurer shall be entitled to a supplementary

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premium to be agreed in accordance with the increased risk. The same shall apply if a risk-relevant circumstance was innocently unknown at the time of signing of contract.

- 7.4. Nothing in the above shall affect the right of the Insurer to contest the contract on the grounds of wilful deceit with respect to risk-relevant circumstances.

## § 8 Change in risk

- 8.1. The Insured is entitled to change the risk, or to have the risk changed by third parties.
- 8.2. The following shall in particular be considered changes of risk:
1. Docking, slipping or major intermediate repairs of the insured vessel;
  2. Unusual towing or being towed of the insured vessel, except in cases of mar time distress or comparable distress situations on rivers, lakes or in ports;
  3. Change of the agreed operating mode, the agreed operating area, or exceeding of the agreed operating limits of the insured vessel;
  4. Chartering of the insured vessel;
  5. Waiver of recourse in charter parties and incentive trip contracts;
  6. Change in shipping company, ship management, crewing or tour operator status / position of Insured.
- 8.3. If the Insured changes the risk or if he obtains knowledge of a change in risk, he shall inform the Insurer in due time himself in the case of a risk change effected by himself, before conducting the voyage/, and in the case of other changes in risk shall inform the Insurer without undue delay on obtaining knowledge of it.
- 8.4. If the Insured has not given notification of an increase in risk, the Insurer shall be exempt from indemnity obligation, unless the violation of the notification obligation was not due either to intent or to gross negligence, or the increase in risk had no influence on the occurrence of the insurance case or on the extent of the indemnity obligation of the Insurer.
- 8.5. The Insurer shall be entitled to a supplementary premium for the increased risk, unless the increased risk was incurred due to the interest of the Insurer or by a humanitarian requirement, or by an insured event which was threatening the vessel.

## § 9 Notification of significant incidents, damage mitigation

- 9.1. Accident and damage notification
- The insured is subject to the following obligations:
- 9.1.1. As soon as the Insured obtains knowledge of the occurrence of an accident affecting the vessel or its planned voyages, or of damage to the insured vessel, or of the occurrence of one of the other insured risks as set out in Art. 4, which could cause non-operation or business interruption damage, he shall give notification thereof to the

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Insurer via the manager of the cover without delay by telephone, and sub-sequently in writing;

- 9.1.2. He shall ensure by appropriate measures or agreements with third parties (e.g. in charter parties or agency contracts) that he himself obtains the relevant knowledge at all times and without delay when conducting voyages / passages of the insured vessel.
- 9.1.3. He shall likewise give notification of occurrence of a business interruption or non-operation damage to the Insurer via the manager without delay.
- 9.2. Damage aversion and mitigation

Before occurrence of damage or an incident affecting the insured vessel, or further insured risks as set out in Art. 4, the Insured shall take appropriate measures, in particular relating to rescheduling or substitution arrangements, in order to avert or mitigate the impending damage from business interruption or non-operation and, wherever possible and reasonable, shall consult on these together with the Insurer via the Manager of the cover. The same shall apply if the business interruption or non-operation damage has already occurred.

If it is not possible to coordinate in sufficient time on necessary and urgent measures, the Insured shall act in accordance with his own due discretion and prudent business practice in such a way as if he had to bear the damage alone, and shall notify the Insurer without delay of the measures taken, via the Manager of the cover.

The Insured shall secure possible compensation or recourse claims vis-à-vis third parties.

If the Insured violates the obligation to avert and mitigate damage, the Insurer shall be free from his obligation to provide indemnity, unless the Insured provides proof that he has no guilt in such violation, or that the violation has no impact on the extent of the damage to be borne by the Insurer.

## § 10 Indemnity and proof of damage

Losses for which claims are made under this insurance must in fact have been incurred by the Insured, and shall be indemnified only on the basis of proven damage.

- 10.1. Determination of interruption or non-operation damage
  - 10.1.1. After occurrence of the business interruption or non-operation damage, the Insured shall provide the damage regulator of the Insurer or the Manager of the cover with all necessary investigation materials on cause and extent of business interruption or non-operation damage, and shall grant him the right to inspect all business documents, including if necessary previous business periods.
  - 10.1.2. Determination of the business interruption or non-operation damage shall include consideration of all circumstances which would have had a positive or negative impact on the procedure and result of operations during the period of the indemnifiable business interruption if the interruption of operations had not occurred (e.g. planned or necessary renewals of classification, overhaul work, or operational changes which were in any case impending).

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10.1.3. The Insurer, the Manager and any damage expert mandated by them are obliged to treat with strict confidentiality any operating data or secrets becoming known to them, and if necessary also to give a separate written declaration of non-disclosure in this respect at the request of the Insured.

10.1.4. If the occurrence or the amount of the business interruption damage are not agreed by mutual consent between Insurer and Insured in the individual case, ascertainment of damage shall be transferred to a joint expert. His ascertainment shall be binding on both parties.

If the two parties cannot agree on a joint expert, each party shall appoint an expert of its choice.

If the ascertainments of these experts differ from one another and the parties cannot reach an agreement on this basis, a third expert shall be co-opted by the two experts, and the ascertainment of the third expert (umpire) shall alone be binding. If no agreement can be reached on the umpire, the umpire shall be appointed, at the request of one of the parties, by the President of the nearest Chamber of Industry and Commerce, or failing that by the responsible commercial court at the place of the registered office of the Insured.

The costs of a joint expert shall be borne by the Insurer in the framework of damage ascertainment costs. If each party appoints its own expert, each of the parties shall bear the costs for its own expert; the costs of an umpire, if appointed, shall be borne equally by the parties.

10.2. Indemnity for business interruption or non-operation damage

The Insurer shall indemnify a case of business interruption or non-operation damage as set out in Arts. 2 4 within the limits specified per day or the period of indemnification up to the total insured amount or, if applicable, an additionally agreed time-related upper limit for total indemnity payments (for example on agreement of a seasonal or annual maximum).

Indemnity shall be paid for any insured profit and/or cost elements insured under business interruption damage only in so far as it would have been obtained and earned if it had not been for the business interruption which actually occurred.

The payment of indemnity shall not lead to enrichment of the Insured. In the event that the business interruption results in economic advantages within one year, such advantages shall be taken into account in equitable manner.

The business interruption damage determined under these provisions shall be reduced by the amount of the agreed deductible. In the event of time deductible, the Insured shall bear the proportion of business interruption damage corresponding to the ratio of the time deductible to the total duration of the interruption of operations actually occurring within the liability period.

10.3. Indemnity for expenditures for damage aversion and mitigation

The Insurer shall also pay indemnity for expenditures and costs incurred by the Insured in accordance with Art. 9.2 for aversion or mitigation of indemnifiable business interruption damage as set out in Arts. 2 4, where these are not already indemnified under the terms of other insurance policies (e.g. under the vessel's hull insurance).

Indemnity shall be paid for expenditures and costs for damage prevention and mitigation even where they are unsuccessful and/or if, together with the indemnity for loss of profit

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or for additional costs and/or any special expenditures, they exceed the insured amount specified. Costs incurred without instructions from the Insurer are indemnifiable up to an amount of 25% of the insured amount agreed in the specific case.

10.4. If the Insured has concluded contracts with insurers including indemnity of some of the risks and benefits that are also covered by the present insurance contract, the present insurance is subsidiary, but has the effect of protective insurance. Thus the Insurer of the present insurance indemnifies the Insured with respect to claims, costs and expenditures even where they could be indemnifiable under other insurance policies. The Insured assigns in advance all claims arising from other insurance policies to the Insurer of this contract, and undertakes to provide the necessary information and documents for this purpose. The necessary recourse actions for the Insurer of this contract will then be implemented by the company ZASS International GmbH, Hamburg.

10.5. Due date and payment of indemnity

The right to claim compensation for business interruption damage shall become due 14 days after it has been determined.

10.6. Advance payment

After elapse of one month from the beginning of business interruption damage, the Insured can demand a part payment of 80% of the amount for which under the given circumstances for the period in question he will, as a minimum, receive indemnity.

It is explicitly agreed between the parties that such advance payment is regarded as a loan, until the Insurer establishes that the payment for the damage incurred by business interruption is converted to a final payment entitlement. The Insured undertakes to repay the full amount of such advance payment, without obligation to pay interest on said amount, in the event that the Insurer determines that the damage from business interruption is not covered by this insurance.

10.7. Exclusion period

An indemnity claim rejected by the Insurer for compensation of a business interruption damage, or for corresponding damage aversion or mitigation costs, may be raised by the Insured in court proceedings only within six months from receipt of the written rejection declaration of the Insurer. If this period elapses without the initiation of court proceedings, the Insured is not entitled to make any claim.

10.8. Special reasons for forfeit

If the Insured or one of his representatives himself culpably caused the transport damage or accident within the meaning of Art. 2. or any additionally insured risk, or if he is guilty of misrepresentation with intent to deceive in the establishment of the indemnity for business interruption/non-operation, the Insurer is released from any requirement to pay indemnity, except if the Insured did not act with intent or gross negligence.

## § 11 Payment of premiums

11.1. Unless otherwise agreed, the Insured shall pay the premium on signing of insurance contract, and at any rate with the beginning of the agreed insurance period.

11.2. If the premium has not been paid at the time of occurrence of the insured event, the Insurer is released from payment obligation.

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## § 12 Premature termination of insurance

- 12.1. The insurance shall end prematurely by lapse of the insured interest, in particular by sale or, unless otherwise agreed, total loss or impossibility of repair, or by insolvency or abandonment of business operations by the Insured.
- 12.2. The Insurer may terminate this insurance for one or all the vessels insured under the policy before completion of the regular term, as follows:
  - 12.2.1. Without observing a period of notice for termination, if the event was caused by total or partial cancellation of a passage due to intentional misconduct on the part of the Insured;
  - 12.2.2. With a period of notice of 7 days if a change in the agreed operating territory or operating mode or shipping line operation or ship management or crewing for the vessel's personnel has occurred.
- 12.3. Except in the case of termination under Art. 12.2.1, the Insurer is obliged to return a corresponding part of the premium in the event of premature termination of the insurance contract.

## § 13 Returns for lay-up times

- 13.1. If the insured vessel is laid up undamaged in a secure port approved by the Insurer within the surcharge-free operating limits, without passengers on board, for a period of 20 or more consecutive days, not counting the day of arrival or the day of departure, the Insurer shall grant a lay-up return of 75% of the pro rata temporis gross premium for the vessel concerned, if lay-up of the insured vessel is effected for other technical or commercial reasons, and not for example as a consequence of the risks covered in Art. 4, and if in addition no work is carried out on the insured vessel.
- 13.2. No lay-up returns are granted on any supplementary premiums.
- 13.3. If the claim to lay-up returns is not made by the Insured within 30 days after expiry of the insurance period, such claim shall lapse.

## § 14 Amendments to insurance

Amendments or additions to the insurance contract including the present special conditions shall be valid only if made in written form as an attachment or supplementary document to the insurance policy.

## § 15 Disputes in the insurance relationship

- 15.1. Any disputes resulting from or in connection with the insurance contract, including any disputes on formation or validity of the contract, shall be decided by a court of arbitration, to the exclusion of ordinary courts of law. The place of such arbitration proceedings shall be Hamburg. Such arbitration proceedings shall be conducted in accordance with the rules of the German Maritime Arbitration Association (GMAA) valid at the time in question.

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- 15.2. Notwithstanding the above, the parties may at any time agree to try and reach a solution through mediation. In this connection, the parties explicitly agree that such mediation shall not interrupt the running of any periods of limitation, unless otherwise explicitly agreed in advance.

## § 16 Co-insurers and Lead Insurer

- 16.1. If insurance is taken over by a number of Insurers, each of them shall in all cases be liable only for its own share, and shall not be jointly and severally liable.
- 16.2. The agreements made by the Manager of the cover for the Lead Insurer with the Insured shall, with the exception of any cover amount agreements, be binding on the Co-insurers. The same shall be applicable for agreement to measures for aversion and mitigation of damage, and for claim settlement and recourse action.
- 16.3. Any notifications and declarations of intention shall upon their receipt by the Manager of the cover be deemed to have received by the Lead Insurer and the Co-insurers.
- 16.4. The Lead Insurer is authorised by the Co-insurers to conduct legal proceedings resulting from the insurance relationship on their behalf; that applies both for mediation and for arbitration proceedings, and if applicable also for any proceedings taken up by the ordinary courts of law.

Any arbitral award made only against the Lead Insurer with respect to the latter's share, any judgement obtained or any out-of-court settlement made after the matter had been under judicial determination, shall be recognised by the Co-insurers as binding on them.

- 16.5. The Lead Insurer is authorised by the Co-insurers to conduct all recourse actions on their behalf and for the whole of the amount.

## § 17 Law applicable

- 17.1. This agreement, as transport insurance agreement, shall at the explicit wish of the contracting parties be governed exclusively by the rules and customs of transport insurance.
- 17.2. It shall be governed by German law.

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