



No binding translation of the
**General Conditions of Austrian Marine Insurance
(AÖTB 2001)**
in case of doubt the German wording is the basis

Non-binding model conditions proposed by the Association of Austrian Insurance Companies. These conditions are without prejudice to any agreement on conditions other than the provisions contained herein. The model conditions are accessible to any interested party and will be made available upon request.

General Part

Preamble

Under these conditions, with the exception of Sect. 14, the policyholder shall be considered equivalent to the assured, the claimant, and persons for whose actions the policyholder, the assured or the claimant is accountable.

Specific Part

Table of contents

Section 1	Scope of application
Section 2	Legal basis
Section 3	Insurable interest
Section 4	Scope of cover
Section 5	Common inclusions under both types of cover
Section 6	Common exclusions under both types of cover
Section 7	Special cases
Section 8	Fault
Section 9	Suitability of the means of transport
Section 10	Period of insurance
Section 11	Insured Value
Section 12	Limits of liability
Section 13	Insurance document
Section 14	Premium
Section 15	Reporting obligation upon conclusion of the contract
Section 16	Alteration of risk, aggravation of risk
Section 17	Change of transport
Section 18	Conditions precedent to liability
Section 19	Indemnification
Section 20	Period for filing a suit
Section 21	Expert procedure
Section 22	Termination
Section 23	Jurisdiction

Sect. 1

Scope of application

The General Conditions of Austrian Marine Insurance shall apply to the insurance of goods for the duration of transport by sea, by land, on inland bodies of water or by air.

Sect. 2

Legal basis

Any transport performed either entirely by sea, partly by sea and in combination with land transport, on inland bodies of water, or by air shall be governed by the provisions of the Code of Commercial Law, Volume 5, Trade by Sea. All other forms of transport shall be subject to the provisions of the Austrian Insurance Act, as amended.

Unless otherwise provided for in these General Conditions and in the insurance policy wording, the relevant provisions of Austrian law shall apply.

Sect. 3

Insurable interest

- (1) Any interest in protecting the goods against the risks of transport, assessable in monetary terms, can be covered by these insurance conditions.
- (2) If the interest for which insurance has been taken ceases prior to the commencement of insurance, or if the interest fails to arise in the event of insurance being taken for a future interest, the policyholder shall be released from the payment of the premium; the insurer may demand an appropriate handling fee.
- (3) The obligation of the policyholder to pay the premium shall not be affected, if the interest for which insurance has been taken ceases to exist after the commencement of insurance.

Sect. 4

Scope of cover

Unless otherwise agreed, the insurer shall cover the risks, depending on the type of cover chosen, which the goods are exposed to period of insurance

Types of cover

- (1) Full cover (against all risks):

Regardless of the exclusions according to Sect. 6, the insurer shall indemnify any loss and damage suffered as a direct consequence of an insured peril.

(2) Limited cover:

The insurer shall indemnify any loss and damage suffered as a direct consequence of any of the events specified below:

a) Stranding

A case of stranding shall be deemed to exist if the vessel carrying the goods strikes the ground, is hard and fast, capsizes, sinks, fails, collides with other vessels or objects, or is damaged by ice.

b) Shipwreck

c) Sacrificing of the goods

d) Unloading, placing in interim storage, transshipment of goods in a port of distress entered in consequence of the occurrence of an insured peril

e) Accident involving the means of transport carrying the goods by land or air

An accident involving the means of transport shall be deemed to exist if the means of transport is materially damaged by mechanical force owing to a sudden extraneous event.

f) Emergency landing of aircraft

g) Derailing

h) Collision or crash of aircraft/flying objects and/or parts thereof or their cargo

i) Collapse of storage buildings and bridges

j) Fire, lightning, explosion

k) Earthquake, seaquake, volcanic eruptions and other natural disasters.

In the absence of a special agreement, the "limited cover" according to Sect. 4 (2) shall be applicable.

Sect. 5

Common inclusions under both types of cover

The insurer shall indemnify for:

- (1) any general average contribution payable by the policyholder based on an average statement made up in accordance with the law or according to York-Antwerp Rules and acknowledged by the average adjuster, if by a general average act a loss or damage covered by the insurer was to be avoided;

(2) expenses for the avoidance or reduction of the loss upon occurrence of an event insured against and the costs of loss assessment incurred by third parties, provided the losses are indemnifiable losses, but no other expenses and costs.

Sect. 6

Common exclusions under both types of cover

(1) The following perils shall be excluded:

- a) war, civil war, war-like events and the perils resulting from the use or existence of instruments of war, irrespective of the state of war or peace
- b) strike, lock-out, riot, pillage, politically-motivated violence or other forms of civil commotion and sabotage
- c) seizure, dispossession or other acts of sovereign intervention
- d) nuclear energy and radioactivity
- e) any perils against which the goods are otherwise insured (e.g. fire), the policyholder shall be obliged to supply to the insurer, upon request, any evidence available to him of other insurance taken.

(2) The following losses shall be excluded:

- a) losses caused by inherent vice or the nature and/or defective condition of the goods, or by self-ignition
- b) losses caused by faulty design, faulty workmanship or faulty material
- c) losses caused by scratching and scraping as well as losses such as malfunction, short circuiting, power surges, induction, implosion, tube or wire breakage, hair cracks, unless such losses occur in connection with an indemnifiable loss
- d) losses caused by ordinary differences or reductions in quantity, volume and weight
- e) losses caused by air humidity and/or temperature fluctuations
- f) losses caused by the absence or unsuitability of the transportworthy packing suited for transport or deficiencies thereof – also in the case of stowage in a container – or caused by inadequate or inappropriate stowage if loading is performed by the policyholder
- g) losses caused by violations of customs or other official regulations, violations of transit regulations or regulations governing the declaration of goods, or violations of rules imposed by the carrier
- h) losses caused by court orders or their enforcement

- i) losses caused by transport in open means of land transport and/or inland vessels or as on-deck shipments on inland vessels
 - j) losses to the packaging, unless otherwise agreed
 - k) losses caused by delays
 - l) losses caused by decrease in value
 - m) indirect losses of any kind.
- (3) If, considering the circumstances of the case, a loss may have been due to one or several of the causes specified under paragraphs (1) – (2), the loss shall be deemed to have been due to such causes, pending evidence of the contrary to be furnished by the policyholder .

Sect. 7

Special cases

- (1) Unless otherwise agreed, the coverage shall be provided for the following "limited cover" according to Sect. 4 (2):
- a) goods shipped without packing
 - b) goods returned to sender
 - c) goods having been subject to prior transport or storage
 - d) second-hand goods or goods shipped in a defective condition.
- (2) The insurance of on-deck shipments shall be subject to special arrangements. If on-deck shipments are accepted for insurance, Sect. 4 (2) "limited cover" shall apply, with the perils of jettison or washing overboard additionally covered.

If goods insured as under-deck shipments are stowed and transported on deck with the knowledge and consent of the policyholder , the liability of the insurer shall be according to Sect. 4 (2) "limited cover".

- (3) Goods in fully closed containers or on ocean-going lighters shall be insured on the same conditions on deck and under deck, with the perils of jettison and washing overboard additionally covered.

- (4) In case of inland navigation the insurer – if especially agreed – shall be liable to cover the costs of towing into the winter port, port duties payable, security guards, etc., against payment of a premium surcharge (winter surcharge). If the goods have to remain in storage in the means of transport due to impairments or closure of river and/or air transport – be it as a result of ice, flooding, low water level or weather-related impairments – an appropriate premium surcharge must be paid, or otherwise the insured's claim to compensation shall be forfeited. When such impairment is brought to the notice of the policyholder, he shall be obliged to inform the insurer thereof without delay.

If navigation or aviation is rendered impossible by ice, flooding, low water level or weather-related obstacles, and if the goods are in the process of being loaded at that time, insurance coverage shall be suspended as of the time of loading and shall be reinstated only upon resumption of navigation or aviation.

Sect. 8

Fault

- (1) The insurer shall be discharged from liability, if the loss has been caused by the policyholder and/or the assured, consignor or consignee wilfully or through gross negligence.
- (2) Moreover, the insurer shall be discharged from liability, if the policyholder and/or the assured has acted fraudulently in the procedure to establish the level of indemnification.
- (3) The insurer shall be discharged from liability, if the policyholder and/or the assured has wilfully or through gross negligence permitted the legally allowed load capacity of the means of transport to be exceeded.

Sect. 9

Suitability of the means of transport

- (1) Insurance coverage shall only be granted if the means of transport is suited for stowing and carrying the goods in question and has been approved by the competent authorities for this purpose.

In case of transport by ocean-going vessels, these have to meet the requirements of the Institute Classification Clause, as amended, and – if necessary – be certified according to the International Safety Management Code (ISM Code), or a valid Document of Compliance (DOC) must be held by the owner or operator of the vessel, as required by the 1974 SOLAS Convention and its additional clauses.

- (2) Upon the insurer's request, evidence of the suitability of the means of transport must be provided by the policyholder.

Sect. 10

Period of insurance

Unless assumption of the risk by the policyholder and/or the assured has been contractually specified, the following shall be deemed to be agreed:

(1) Insurance shall commence at the time when the goods leave their previous location at the consignor's warehouse or storage site at the place of departure specified in the insurance document for the purpose of immediate shipment; it shall remain in effect during normal transport and terminate upon occurrence of any of the following events, whichever occurs earlier:

a) as soon as the goods have been delivered to the place of destination specified in the insurance document;

b) upon delivery to another storage site selected by the policyholder before or at the place of destination specified in the insurance document .

Delivery of the goods shall be deemed to have been made after unloading from the delivering means of transport;

c) upon transfer of the risk, if the goods are sold due to the occurrence of an insured event;

d) as soon as the goods are transported, after unloading at the port or airport of destination, to a place of delivery not agreed upon in the insurance document.

In any case, insurance shall terminate upon expiry of fifteen days after arrival of the goods at the place of destination specified in the insurance document, but not later than 60 days after unloading of the goods insured at the final port of discharge in the case of transport by sea.

(2) Insurance shall be suspended for any period during which transport of the goods is stopped by the policy-holder.

If the goods are stopped for any other reason before they reach the place of destination and/or the port of discharge in the case of transport by sea for more than 30 days, insurance shall be suspended upon expiry of that period.

Sect. 11

Insured value

(1) The insured value of the goods shall be deemed to be equivalent to their trade value or, in the absence of a trade value, the fair market value of the goods at the place of dispatch upon the commencement of insurance, plus insurance costs as well as costs incurred by the carrier prior to the acceptance of the goods. This value shall also be deemed to be the insured value in the event of an insured loss.

- (2) Moreover, insurance may be taken for the following:
- a) the costs of transport, in particular the freight costs and the costs incurred at the place of delivery, including customs duties
 - b) the imaginary profit – i.e. the profit expected by the buyer upon arrival of the goods at the place of destination, provided the buyer assumes the risk of transport – up to 10% of the insured value of the goods and the costs insured against according to a), unless otherwise agreed.
- (3) A sentimental value must not be considered in the determination of the insured value.
- (4) Insurance must not lead to any enrichment. Even if the sum insured is higher than the insured value at the time of occurrence of an insured loss (over-insurance), the insurer is not obliged to indemnify the policyholder for anything in excess of the actual loss.
- (5) If the policyholder enters into the insurance contract with the intention of deriving an unlawful pecuniary advantage from over-insurance, the contract shall be null and void. The premium shall nevertheless be payable to the insurer, unless the insurer was already aware of the reason for the contract being null and void at the time of its conclusion.
- (6) If insurance is taken for only a part of the insured value (partial or under-insurance), the insurer shall be liable for losses only according to the ratio of the sum insured to the insured value.

Sect. 12

Limits of liability

- (1) The liability of the insurer for the loss incurred shall not exceed the sum insured. The refund of expenses shall be subject to Sections 63 and 144 of the Austrian Insurance Act and to Sections 834 and 840 of the Code of Commercial Law in the case of transport by sea.
- (2) If, in the case of general average, the general average contribution is higher than the sum insured, the insurer shall be liable for the general average contribution only according to the ratio of the sum insured to the contribution paid.

Sect. 13

Insurance document

- (1) Individual shipment policy

Upon request, the insurer has to issue a signed document to the policyholder, which bears the insurer's signature and embodies the insurance contract (policy). A reproduction of a hand-written signature shall be sufficient.

If a policy has been issued, the insurer shall only be obligated to pay for a claim, if the policy is presented to the insurer. Through the payment made to the holder of the policy the insurer shall be discharged of any further liability.

If the policy has been lost or destroyed, the insurer shall be obliged to indemnify the insured, if the policy is declared invalid or collateral has been provided; the provision of security by guarantors shall be excluded.

The insurer shall be obliged to issue a replacement document upon the request of the policyholder ; the costs thereof have to be borne by the policyholder.

The contents of the policy shall be deemed approved by the policyholder, unless the insured objects to it immediately upon receipt of the policy. The right of the policyholder to void the approval on grounds of error shall not be affected thereby.

(2) Open cover

- a) If insurance has been taken in such a way that the goods were named generically upon conclusion of the contract and are being specified individually to the insurer as the interest of the insured arises, the insurer shall be obliged to issue a document bearing his signature and embodying the above-mentioned insurance contract to the policyholder. This contract shall not be considered a policy as defined by the law and in these conditions.

The contents of such a contract shall be deemed approved by the policyholder , unless the policyholder objects to it immediately upon receipt of the policy. The right of the policyholder to void the approval on grounds of error shall not be affected thereby.

If the document has been lost or destroyed, the policyholder may demand the issue of a replacement document; the costs thereof have to be borne by the policyholder .

- b) Upon request, the insurer has to issue a signed document (certificate) for the individual shipment to the policyholder. A reproduction of a handwritten signature shall be sufficient.

If a certificate has been issued, the insurer shall be obliged to pay in the event of a loss only against presentation of the certificate. Through the payment made to the holder of the certificate, the insurer shall be discharged from any further liability.

If the certificate has been lost or destroyed, the insurer shall be obliged to indemnify, if the certificate is declared invalid or collateral has been provided; the provision of security by guarantors shall be excluded.

The insurer shall be obliged to issue a replacement document upon the request of the policyholder the costs thereof have to be borne by the policyholder .

Sect. 14
Premium

Unless otherwise agreed, the relevant provisions of the Austrian Insurance Act, as amended, shall apply with regard to the premium.

Sect. 15
Reporting obligation upon conclusion of the contract

- (1) Upon conclusion of the contract, the policyholder shall notify the insurer of all circumstances known to him which may be of relevance to the coverage of the risk; this obligation shall also apply if the policyholder deems a message received to be irrelevant or unreliable.
- (2) Considered particularly relevant is when, due to the nature of the goods, even a minor loss caused by an event insured against may result in a total loss or a disproportionate increase of the extent of the loss.
- (3) Any incorrect notification knowingly, any concealment or any fraudulent misrepresentation shall authorise the insurer to terminate the contract retroactively and to be released from his obligation to hold the insured covered.

The obligation to pay the premium shall not be affected by any of the above.

- (4) The insurer shall be obliged to maintain cover, if the insurer has been aware of the circumstance not notified or the incorrect nature of the notification given. The same shall apply if the failure to notify was not due to any fault on the part of the policyholder .

If the insurer's obligation to hold the insured covered remains valid and if the special circumstance is associated with a higher risk, the insurer shall be entitled to a higher premium commensurate with the higher risk (premium surcharge).

Sect. 16
Alteration of risk, aggravation of risk

- (1) After conclusion of the contract, the policyholder shall not be allowed to change the risk without the approval of the insurer; in particular, he shall not be allowed to aggravate the risk or allow a third party to change the risk.
- (2) The following shall be deemed to be an alteration of risk:
 - a) a substantial delay in the commencement or completion of the insured transport,
 - b) a substantial departure from the indicated or customary transport route,
 - c) a change of the place and/or port of destination,

d) the transport of the goods on crafts, rafts or lighters without this being customary on the route concerned.

(3) If the policyholder violates the provisions of paragraphs (1) and (2), the insurer may terminate the insurance contract for the transport concerned without observing the period of notice. The insurer shall thus be released from his obligation to hold the insured covered.

The insurer's obligation to hold the policyholder covered shall be upheld if the alteration of the risk has occurred without the knowledge of the policyholder. However, the policyholder shall be obliged to notify the insurer of the alteration of the risk as soon as it has been brought to his attention .

(4) If the policyholder has failed to report an alteration of risk which results in an aggravation of the risk, the insurer shall be released from his obligation to indemnify, unless

- a) the violation of the reporting obligation has been neither intentional nor grossly negligent, or
- b) the aggravation of the risk neither had an influence on the occurrence of the event insured against nor on the extent of the insurer's obligation.

(5) For the aggravation of the risk the insurer shall be entitled to a premium surcharge to be agreed, unless the aggravation of the risk was

- a) due to the interest of the insurer, or
- b) due to the duty of humanity, or
- c) necessary on account of an insured event threatening the goods.

Sect. 17

Change of transport

(1) If the goods are transported by a means of transport other than that agreed in the insurance contract without the approval of the insurer, or if the goods are transhipped although direct transport has been agreed upon in the insurance contract, the insurer shall be released from his obligation. The same shall apply if the exclusive use of a specified means of transport or a specified transport route has been agreed.

(2) The insurer's liability shall be upheld, if after commencement of the insurance or if the transport is not performed on account of an insured event or without the approval of the insured after the commencement of insurance.

(3) Moreover, the provisions on alteration of risk shall apply accordingly.

Sect. 18

Conditions precedent to liability

- (1) The policyholder has to notify the insurer immediately of the loss as well as any accident concerning the means of transport or the consignment, if the accident is of relevance for the risk assumed by the insurer; this provision shall apply even if the loss or accident does not constitute grounds for a claim for compensation.
- (2) In the case of transport by sea the policyholder has to notify a loss to be covered by the insurer within 15 months of termination of insurance, and in the event of a ship missing at sea within 15 months of expiry of the period of presumptive loss, by submission of a written statement. The period shall be running as of the date of dispatch of the statement.

The claim of the policyholder for compensation shall become void if the loss is not reported in time.

These provisions shall not apply to general average contributions paid by the policyholder.

- (3) In the event of a loss, the policyholder has to take all measures which reasonably have to be taken to prevent and mitigate the loss. Circumstances permitting, instructions have to be requested from the insurer.

In particular, the following measures have to be taken immediately:

- a) If a loss and/or damage is to be suspected or identifiable in the course of transport or upon delivery of the goods, the carrier, the warehouse company, the port authority, etc., are to be held liable in writing and have to be summoned to a joint inspection without delay. A written protest and/or a qualified reservation is to be issued.
- b) If a loss and/or damage is not identifiable upon delivery of the goods, the carrier, the warehouse company, the port authority, etc., have to be held liable in writing immediately upon establishment of the loss or damage, but at the latest before expiry of the deadlines set in the transport conditions applicable, and summoned to a joint inspection.

The surveyor named in the policy or the insurance certificate has to be consulted immediately to assess the extent of the loss. If a surveyor has not been named by the insurer or cannot be engaged to assess the loss, the nearest "Lloyd's Agent" has to be engaged to assess the loss.

- (4) In the event of a loss, the policyholder may demand any information from the policyholder which is required to establish the loss or the extent of the insurer's liability. The policyholder may demand the presentation of records to the extent to which the policyholder can reasonably be expected to produce such records.

To prove the loss and to substantiate claims for compensation, the following documents, in particular, have to be submitted to the insurer:

- a) original policy or insurance certificate
 - b) originals of all transport documents
 - c) original delivery note, including the list of items and their weights
 - d) original survey report, including the original statement of fees of the surveyor
 - e) originals of all documents proving the loss of and/or damage to the goods
 - f) all correspondence regarding the loss and/or damage and/or the securing of rights
 - g) statement confirming the immediate notification of the competent authority in case of losses due to fire, theft, burglary and robbery, if the transport was performed by the policyholder himself
 - h) claim invoice
 - i) letter of subrogation
- (5) If the policyholder has a claim for damages against a third party, the claim shall be assigned to the insurer, provided the latter has indemnified the policyholder for the loss. If the policyholder waives his claim against the third party or a right serving to secure the claim, the insurer is released of his coverage obligation to the extent to which compensation could have been obtained on the basis of the claim or right thus waived.
- (6) In the event of general average, the average statement must not be acknowledged by the policyholder without the approval of the insurer; nor must the deposit or final contribution be established or paid without the approval of the insurer.

If the policyholder violates this condition, the insurer shall be released from his coverage obligation.

- (7) If the policyholder violates any of the conditions specified in paragraphs (1) and (3) to (5), the insurer shall be released from his coverage obligation, if the violation has been committed wilfully or on the basis of gross negligence. In the case of a violation based on gross negligence, the insurer shall remain liable to the extent to which the violation has neither affected the assessment of the loss nor the establishment or the extent of the compensation to be paid by the insurer.

Sect. 19

Indemnification

(1) Loss of the goods

If the goods are totally lost, removed from the policyholder without any prospect of recovery, or destroyed in their original condition according to the assessment of experts, the policyholder may demand the part of the insured sum of the goods, minus the value of salvaged and reusable goods (residual value).

(2) Disappearance

If the goods are missing together with the means of transport, the insurer shall indemnify, as in the case of a total loss, unless there is an overwhelming probability of the loss having been due to an uninsured risk.

A means of transport shall be deemed missing if 60 days have passed since the scheduled date of arrival at the final place of destination, or 30 days in Europe in the geographical meaning of the term, and no news has been received of the means of transport until the date at which the claim is made. If communication is impeded by war, war-like events, civil war or internal commotion, the deadline shall be extended, depending on the circumstances of the case, but it must never be longer than six months.

(3) Damage

If the goods or parts thereof are damaged, the trade value, or in the absence of a trade value their fair market value, which the goods would have at the place of delivery in undamaged condition (sound value), and the value of the goods in damaged condition (damaged value) must be determined. The fraction of the insured value corresponding to the ratio of this difference in value to the sound value shall be deemed to be the loss amount.

The value of the goods in damaged condition may also be determined by private sale or by public auction, if so demanded by the insurer immediately upon notification of the circumstances affecting the loss amount; in this case, the gross proceeds shall be considered instead of the value of the damaged goods.

Damaged goods can never be abandoned to the insurer without the insurer's approval. Non-acceptance of the insured good by the recipient does not constitute a ground for a claim for compensation. The costs resulting from non-acceptance of the insured good are not at the insurer's expense.

(4) Repair / Replacement

In the event of damage to or loss of parts of the goods, the insurer shall cover the costs of restoration or recovery of the parts damaged or lost, as established at the time of assessment of the loss, but only according to the ratio of the sum insured to the value according to Sect. 11 at the time of assessment of the loss.

The value of the existing material shall be accounted for. If individual parts are replaced, the insurer shall have the right to make a "new for old" deduction to be determined according to the type, age and condition of the parts replaced.

Additional expenses, particularly those incurred through modifications or improvements made in the course of the repair of a damaged good or the restoration to its former state, as well as overhaul measures, shall be at the expense of the policyholder. Provisional repairs shall be indemnified only if provided for in Art. 5 (2).

(5) Sale of goods before termination of the insured voyage

If the voyage of the ship is abandoned after the beginning of insurance or not completed for another reason without the insurer being released from his coverage obligation, the insurer may demand that the policyholder, with the insurer's assistance, sell the goods privately or by public auction, if the goods cannot be conveyed further without this causing disproportionately high costs and within an appropriate period of time. If the insurer demands that the goods be sold, the sale has to be effected without delay.

If the goods are sold, the policyholder may demand the difference between the sum insured and the proceeds. The same shall apply if the goods have to be sold during the voyage following an accident for which the insurer is liable.

(6) Interest not arisen, costs saved

If an insured interest in an imaginary profit, added value, customs duties, freight charges or other expenses has not yet arisen upon the occurrence of an insured event, the part of the sum insured corresponding to such interest shall not be considered in the assessment of the loss. The same shall apply to costs saved as a result of the occurrence of the insured event.

(7) Other compensation

Whatever other compensation the policyholder may have received for the loss must be offset against the indemnity paid.

If a third party contracted to perform the transport cannot be held responsible for compensation of the loss, because his liability beyond the ordinary extent is limited or excluded, the insurer shall be discharged from his liability to the extent to which he would have obtained compensation in the absence of such limitation or exclusion of liability.

This provision shall not apply if the policyholder was not in a position to influence the limitation or exclusion of liability.

(8) Subrogation

- a) If the Assured requests payment of the insured sum, the insurer may decide whether or not the rights to the goods or the title to the insured goods shall transfer to him upon payment of the sum insured. This subrogation is void unless the insurer decides to take this right of subrogation immediately after notification of the circumstances of the insured event. If the insurer opts for subrogation, the insured shall still be obliged to take the necessary measures to mitigate the loss, if the insurer is not able to do so. He has to disclose any information necessary for the insurer to secure these rights, deliver or issue the documents serving as evidence, and assist the insurer in the recovery and realisation of the goods. The costs thereof have to be borne and, upon request, advanced by the insurer. Any part of the net proceeds of the sale exceeding the sum insured has to be refunded to the policyholder.

If subrogation is not chosen, the policyholder has to reimburse the fair market value of the goods or the net proceeds of the sale to the insurer.

- b) After the occurrence of a loss, the insurer shall have the right to discharge himself of any other liabilities through payment of the sum insured. Despite such discharge, the insurer shall nevertheless remain liable to reimburse the expenses incurred in the avoidance or mitigation of the damage or in the restoration or repair of the property insured prior to service upon the policyholder of the insurer's statement of intention to discharge himself through payment of the sum insured. The insurer shall not acquire any title to the property insured through such payment.

(9) Due dates of payments to be made by the insurer

Payments by the insurer shall be due one month after termination of loss adjustment and the establishment of the amount payable. If loss adjustment is not completed within one month of notification of the loss, the policyholder may demand payments on account up to the minimum amount payable by the insurer in view of the circumstances of the case, which are subsequently offset against the overall claim payment. The running of time shall be suspended as long as the termination of loss adjustment is hindered through a fault of the policyholder.

If police or criminal investigations have been initiated against the policyholder or the assured on account of the loss, the insurer may refuse payment pending completion of the investigation.

(10) Currency

As a matter of principle, claims for compensation have to be settled in the currency in which the insurance was taken. In the case of general average charges and contributions paid in foreign currencies, the amount shall be converted into the currency of the policy at the rate of exchange applicable on the day of payment.

Sect. 20

Time for suit

The insurer shall be discharged from liability, if the claim is not enforced by legal means

- a) within six months in the case of transport by land and air,
- b) within 12 months in the case of combined transport by land, air and sea.

The period shall not begin to run before the insurer has refused in writing to settle the claim of the policyholder, with due reference to the legal consequences of the expiry of the deadline.

Sect. 21

Expert procedure

- (1) In the event of a dispute, the amount of the loss has to be established by experts.
- (2) The insurer and the policyholder or assured shall nominate one expert each without delay and inform the opposing party of the nomination. The party having nominated its expert may request the other party, which has not yet nominated its expert, in writing to do so within two weeks of service of process, with due reference to the consequences of failure to nominate an expert. If no expert is nominated, the requesting party may have the expert of the opposing party nominated by the Lead Association of Certified and Sworn Experts or the Federal Economic Chamber (Hauptverband der allgemein beeideten und gerichtlich zertifizierten Sachverständigen oder durch die Bundeskammer der gewerblichen Wirtschaft); if need be, the nomination may also be performed by the diplomatic or consular representation of the Republic of Austria for the territory on which the goods are held. If the experts are unable to agree on the amount of the loss or wish, from the beginning of the procedure, a third expert to participate in this process, they shall together nominate that expert to serve as their chairperson, with subsequent decisions taken by a majority of votes.
- (3) The rejection of an expert is subject to the provisions of the Code of Civil Procedure.
- (4) The experts shall inspect the loss, assess the amount of the loss, and produce a written expert opinion thereon. The parties concerned have to be present during the inspection of the loss, provided this is feasible and economically justifiable.
- (5) The statement made by the experts shall not be binding, if it obviously differs substantially from the actual situation. In such case the decision shall be taken by the court.
- (6) Each party shall bear the costs of its own expert; the costs of the chairperson shall be shared equally by the two parties.

Sect. 22

Termination

If the insurance contract has been concluded for several shipments or for a specified period of time, the insurer shall have the right to terminate the insurance contract after the occurrence of a loss. Termination shall take effect 14 days after service of process. For goods in transport at the effective date of termination the insurance shall remain in force until the point in time at which insurance coverage ends according to Section 10.

Sect. 23

Jurisdiction

- (1) For disputes arising under the insurance contract, the courts of the place at which the insurer – in the case of several insurers the leading insurer named in the policy – has his official residence (headquarters) shall have jurisdiction.
- (2) If the contract was placed or concluded through an insurance agent, Section 48 of the Insurance Act shall apply.
- (3) The nomination of surveyors and settling agents and/or the fact that payment for claims is made outside Austria shall not establish jurisdiction at the place of payment.