



# Hamburger Yacht-Versicherung

## Schomacker Versicherungsmakler GmbH

### Terms and Conditions for Comprehensive Insurance for Yachts (Hull Insurance) (YKB)

The present translation was completed on the basis of the relevant German source text, however, the latter alone is legally authoritative.

#### 1. Scope of application

Insurance is arranged in respect of the marine area defined by the navigational limits specified within the policy document as well as for the keeping of the insured object onshore including its removal from and placement into the water as well as the transport this necessitates. With respect to the overstepping of these navigational limits or where transport not specified in the policy document is undertaken, these instances are covered by the insurance agreement but are required to be notified to the insurer for the purpose of calculating any possible increase in premiums (mark-up premium).

#### 2. Insured objects

- 2.1. Where notified to the insurer prior to the conclusion of the insurance agreement the following objects are insured for the amount specified in the policy document:
  - 2.1.1. The vessel, its machinery equipment, the permanently installed inventory, the permanently installed and loose items of nautical equipment including instruments, masts, sails and dinghy.
  - 2.1.2. The outboard engine.
  - 2.1.3. personal effects such as video, DVD, photographic, film, television and radio apparatus, clothing and loose inventory not considered to constitute nautical equipment, whereby provisions, money, certificates, valuables and jewellery and similar items are excluded there from.
  - 2.1.4. trailer and winter lay-up platform.
- 2.2. Where no insured amount was expressly specified in the policy in respect of personal effects, these are also insured up to the value of 2% of the insured amount as defined under paragraph 2.1.1. but up to a maximum of EUR 2.000,00. For charter yachts 2.2. is only valid for personal effects of the yacht owner.
- 2.3. Inventory, equipment and accessories are also insured when located outside the insured vessel provided these are stored in a properly locked room or are securely held when carried during personal safekeeping.

#### 3. Scope of insurance cover

- 3.1. The insurer will compensate all damage and losses (all risk cover) to the insured objects occurring during the period of the insurance agreement, up to the agreed maximum amount set out in the policy document.
- 3.2. The insurer will compensate salvage costs (including where salvage proved unsuccessful) and the costs sustained by the policy holder in the avoidance or reduction of loss upon the occurrence of an event covered by insurance insofar as the policy holder may consider this imperative given the circumstances.
  - 3.2.1. When demanded by the policy holder the insurer shall advance the payment of the amount required to cover the said costs. If the insurer is entitled to reduce the amount of compensation it is obliged to pay, it may also, in accordance with paragraph 3.2, reduce the amount paid as compensation of these costs.
  - 3.2.2. Salvage and other costs incurred by the policy holder will also be compensated where these exceed the insured amount when added to the other payable compensation.
- 3.3. The insurer will also pay an additional sum, up to a maximum of EUR 1.000.000,00, for the removal or disposal of the insured vessel or wreck. The foregoing is conditional upon the occurrence of an insured event following which the policy holder is liable for the disposal of the wreck and/or payment of the costs inherent therein.
- 3.4. The insurer is entitled, upon two days period of notice, to cancel the insurance cover in the event of industrial action, riots, civil commotion of whatever type including punishable rioting and looting.

#### 4. Exclusions

The insurer shall not be obliged to pay compensation:

- 4.1. for damage caused deliberately by the policy holder or authorised master of the vessel. Where the insured event was caused due to gross negligence on the part of the policy holder or master in charge of the boat, the insurer is entitled to reduce the payment of compensation in accordance with the degree of culpability of the former.
- 4.2. for damage caused by rain, snow, heat, frost, ice, rust and oxidation, the effects of sunlight, mildew, electrolysis, cavitation, through decay, vermin, rats and mice, as a result of workmanship and repair insofar as this does not constitute consequential damages/loss that follows an insured event.
- 4.3. for damage from osmosis, unless this damage became visible within the first 48 months after manufacture of the yacht (CE number, year of construction) and, prior to its initial launch, the vessel received an anti-osmosis treatment applied by a professional workshop in accordance with the current technical standards. The insurance cover is only activated once efforts to enforce the claims under warranty and guarantee have proven unsuccessful.
- 4.4. for indirect losses/damage of whatever type (e.g. diminution of value and impairment of racing performance).
- 4.5. for direct damage/loss due to wear and tear sustained in the course of normal use, for construction, manufacture or material defects in the parts affected directly thereby; consequential damage/loss resulting from this is insured within the scope of these terms and conditions.
- 4.6. for theft of the boat when located on its trailer, where it has not been secured by a suitable box lock, wheel clamp or similar device. The same applies to the trailer itself, where this is also insured pursuant to paragraph 2.1.4.
- 4.7. for damage caused by war, civil war or warlike operations, mines, torpedoes, bombs, or other weapons of war, terrorist attacks or violent political events, confiscation, divestment or other intervention by public authorities.
- 4.8. for damage resulting from the use of chemical, biological or biochemical substances or electromagnetic waves deployed as weapons with an aggressive intention, irrespective of any other contributory factors.
- 4.9. for damage caused by nuclear energy or other ionising radiation.
- 4.10. for damage where the master in charge of the insured vessel does not possess the sailing license officially required for the vessel and/or the navigated area.
- 4.11. for damage caused to the machinery equipment where this is not the result of fire, singeing, scorching, short circuit, lightning strike, an accident experienced by the insured vessel, explosion, force majeure, storm, theft, burglary, wilful and malicious acts of third parties, sinking, capsizing, beaching, water penetration or through a collision with a floating or fixed object. All other machine damage, with the exception of frost and ice damage, is insured up to 36 months after manufacture of the yacht (CE number, year of construction) or the engine (engine number) - depending on which is older - following unsuccessful efforts to pursue possible claims under warranty and guarantee, provided the applicable service and maintenance guidelines as defined by the manufacturer (in particular those relating to winter lay-up) have been demonstrably fulfilled. This insurance cover may be extended upon agreement.
- 4.12. for damage that occurs when the vessel is not being used for sporting or leisure activities, e.g. charter or hire in return for payment. This exclusion may be reversed upon agreement.
- 4.13. for loss arising from simple theft.
- 4.13.1. for outboard motors, where these have not been securely bolted to the vessel or connected to it by means of an anti-theft device certified with a test seal issued

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by VdS Schadenverhütung GmbH (VdS)\*. Alternative anti-theft devices may be approved on a case-by-case basis.

4.13.2. for other non-fixed property where this has not been properly secured, or which is located on the covered and tied-up vessel.

4.14. as well as for loss resulting from fraud or embezzlement.

## 5. Policy holder's pre-contractual duties of disclosure

5.1. Completeness and accuracy of the information regarding the risk-related circumstances:

Prior to making his/her contractual statement (proposal for a policy), the policy holder is to disclose to the insurer all risk-related circumstances known to him/her. The insurer will undertake an inquiry in this respect by means of a written communication, e. g. by mail, fax or e-mail and the information given in response here is of fundamental importance to the insurer in reaching its decision to conclude the contract under the agreed conditions. The policy holder is also to make appropriate disclosures in response to questions from the insurer pursuant to paragraph 5.1 issued following his contractual statement (proposal for a policy) but prior to accepting the policy holder's proposal for insurance.

5.2. Cancellation

5.2.1. Conditions for cancellation:

The insured is entitled to cancel the insurance agreement where incomplete or inaccurate information has been given with regard to the risk-related circumstances.

5.2.2. Exclusion of right of cancellation:

The insurer is not entitled to cancel the agreement if the policy holder can demonstrate that the inaccurate or incomplete information was not given deliberately or as the result of gross negligence.

The insurer is not entitled to cancel the agreement due to a grossly negligent breach of the duty of disclosure, where the policy holder can demonstrate that the insurer would still have concluded the agreement, even under other terms and conditions, had it known of the non-disclosed information.

5.2.3. Consequences of cancellation

There is no insurance cover following cancellation of the agreement.

If the insurer cancels the agreement following the occurrence of an insured event, it may not refuse payment of the insurance cover if the policy holder is able to demonstrate that the incomplete or inaccurately disclosed information did not have any causal connection with the occurrence of the insured event nor was relevant for the determination or scope of the compensation payment. However, even if this was the case, if the policy holder intentionally breached his duty of disclosure, he will not be entitled to insurance cover.

The insurer remains entitled to receive insurance premiums for that part of the contractual period remaining prior to the declaration of cancellation becoming effective.

5.3. Termination

Where the insurer's right to cancel the agreement is excluded because the breach of the duty of disclosure was not founded on intent or gross negligence, it is entitled to terminate the agreement in writing, i. e. by means of a signed paper document giving a one-month period of notice.

The right to terminate the agreement is excluded where the policy holder is able to demonstrate that the insurer would still have concluded the agreement, even under other terms and conditions, had it known of the non-disclosed information.

5.4. Retrospective modification of the insurance agreement

If the insurer is not entitled to cancel or terminate the agreement on the grounds that it would still have concluded the agreement, but in return for other terms and conditions, had it known of the non-disclosed circumstances, then it may demand that these other terms and conditions are retrospectively made an effective part of the agreement. If the policy holder is not responsible for the breach of the duty of disclosure, these other terms and conditions only become an integral part of the agreement as of the current insurance period.

If the modification of the agreement entails an increase in the premium by more than 10% or the insurer declines to provide insurance cover in respect of the non-disclosed circumstances, the policy holder is entitled to cancel the agreement in writing, i. e. by means of a signed paper document and without notice within one month of receiving the relevant notification from the insurer.

5.5. Exercising the rights of the insurer

The insurer is obliged to exercise the rights to which it is entitled under paragraphs 5.2. to 5.4. in writing within one month. In doing so it must state the reasons on the basis of which it is making the particular declaration. The time period starts from that point in time when it becomes aware of the breach of the duty of disclosure upon which it is basing the rights to which it has become entitled.

The insurer is only entitled to the rights granted under paragraphs 5.2. to 5.4. if it has instructed the policy holder in a special written communication, e.g. letter, fax, e-mail etc. of the consequences of any breach of the duty of disclosure. The insurer may not avail of the rights granted under paragraphs 5.2. to 5.4. if it was aware of the non-disclosed risk-related circumstance or the inaccuracy of the disclosure.

5.6. Rescission

The insurer remains entitled to rescind the agreement on the grounds of intentional misrepresentation. Where the agreement is rescinded the insurer remains entitled to the payment of the insurance premium for the remaining contractual period until the declaration of rescission becomes effective.

## 6. Risk increase

6.1. Definition of an increase in risk

6.1.1. An increase in risk is established if, following the submission of the policy holder's proposal for a policy, the actual circumstances are changed with the result that the occurrence of an insured event, an increase in loss or an unjustified claim against the insurer are made more likely.

6.1.2. An increase in risk is specifically, but not exclusively, established when, prior to the conclusion of the agreement, a risk-related circumstance changes after the insurer has inquired about it.

6.2. Alternative rights of the policy holder to the statutory provisions relating to increases in risk pursuant to paragraph 23 ff German Insurance Contract Act (VVG):

6.2.1. Contrary to paragraph 23 German Insurance Contract Act (VVG), the policy holder is entitled to increase the risk or amend it by other means or to effect this change to be undertaken by a third party. He must inform the insurer of the change without delay.

6.2.2. In the event that the policy holder has failed to disclose an increase in risk, the insurer is obliged to pay compensation if the insured event occurs after the point in time at which the disclosure should have been submitted to the insurer. It is obliged to pay compensation,

1. if it was aware of the increase in risk at the time at which the disclosure should have been made to it,
2. if the breach of the duty of disclosure was not intentional or the result of gross negligence or
3. where the increase in risk did not cause the occurrence of the insured event or was not relevant to the scope of the compensation payable.

6.2.3. Contrary to paragraph 24 German Insurance Contract Act (VVG) the insurer is not entitled to terminate the agreement on the basis of an increase in risk.

## 7. Insured amount

7.1. The insured amounts specified in the insurance policy are each deemed to be estimates negotiated and agreed between the parties and, as such, are therefore incontestable.

7.2. The insurer undertakes not to raise any objection against possible claims for compensation on the grounds of underinsurance (exclusion term).

## 8. Premium and start of insurance period

8.1. The invoiced premium includes the respective statutory rate of insurance tax payable from time to time by the policy holder.

8.2. Payment and consequences of delayed payment / initial or single premium

8.2.1. Due date of payment

The initial or single premium is due immediately upon two weeks from the time the insurance policy is received by the policy holder.

Where it is agreed that the annual premium will be paid in instalments, the first premium is deemed only to be the first instalment on the first annual premium.

\* VdS = test company operated by the German Insurance Association

#### 8.2.2. Delayed start to insurance cover.

If the policy holder does not pay the initial or single premium on time, but at a later time instead, the insurance cover only starts at the later time, provided that the policy holder has been informed of this legal consequence either in the form of a special written communication, e. g. by mail, fax or e-mail or by means of a prominent notice to this effect included in the insurance policy. This foregoing does not apply where the policy holder demonstrates that he is not responsible for the delay in payment.

#### 8.2.3. Cancellation

If the policy holder fails to pay the initial or single premium on time, the insurer is entitled to cancel the agreement so long as the premium remains unpaid. The insurer may not cancel the agreement where the policy holder demonstrates that he is not responsible for the delay in payment.

#### 8.3. Payment and consequences of delayed payment / renewal premium

##### 8.3.1. Due date of payment

The renewal premiums are due upon the agreed dates.

Payment is deemed as being on time provided it takes place by the time stipulated in the insurance policy or the premium invoice.

##### 8.3.2. Default

If the renewal premium is not made on time the policy holder is in default without the requirement for the issue of a reminder, unless he is not responsible for the delayed payment.

The insurer is entitled to demand compensation for losses it sustains due to the delay in payment.

##### 8.3.3. Payment demand

In the event that a renewal premium is not paid when due, the insurer is entitled, at the cost of the policy holder, to stipulate a period for payment by means of a written communication, e. g. by letter, fax or e-mail. This period must be at least two weeks. This written stipulation is only effective provided it contains a detailed breakdown of the outstanding premium, interest and costs, as well as describing the legal consequences associated with the expiry of the period pursuant to paragraphs 8.3.4. and 8.3.5.

##### 8.3.4. No insurance cover

If, following the expiry of this period for payment, the policy holder remains in default, from this time there is no longer any insurance cover provided the policy holder was informed of this legal consequence with the issue of the payment demand pursuant to 8.3.3.

##### 8.3.5. Termination

If the policy holder remains in default after the expiry of this period for payment, the insurer is entitled to terminate the agreement without further notice, provided the policy holder was informed of this legal consequence with the issue of the payment demand pursuant to 8.3.3.

If the insurer terminates the agreement and the policy holder pays the outstanding amount within one month the agreement will then continue. No insurance cover is available, however, in respect of insured events arising between receipt of the termination and the time of payment.

#### 9. Procedure following occurrence of the insured event

##### 9.1. The policy holder shall:

- 9.1.1. inform the insurer immediately of the loss event including details of the probable value of the loss and the location at which the damage may be inspected. As a general rule, in order to establish the loss he must provide the insurer with:
  - a record of the circumstances of the accident, the cause and damage/loss,
  - sketch of the accident,
  - names, addresses of persons involved,
  - names, addresses of witnesses,
  - address, file reference of the police station where report was filed,
  - proofs of value, e.g. original receipts,
  - statement of total loss.

##### 9.1.2. take steps to reduce loss sustained and avoid further loss.

##### 9.1.3. follow the instructions of the insurer, or the nearest available loss adjuster, and obtain instructions of this type where circumstances allow.

##### 9.1.4. facilitate the insurer, prior to any repair works, in using an assessor to obtain all relevant information relating to the nature, extent and cause of the loss/damage.

##### 9.2. Damage arising due to fire, explosion, theft and malicious damage must be notified to the nearest available police station. The policy holder is also to file a criminal complaint and submit a listing of the property damaged or stolen.

##### 9.3. With regard to collision damage and damage arising when the insured object was in the custody of a third party - transport company, boat repair yard, storage company, charterer etc. - a loss assessment report must be immediately prepared in conjunction with the relevant third party detailing cause, circumstances and extent of the damage. This must be forwarded without delay to the insurer and shall include details of the name, address and insurance company of the third party. If the policy holder has a claim for compensation against a third party, he is obliged to disclose all information to the insurer required for enforcing the claim and to assign the claim accordingly. Even after the assignment of the claim to the insurer, the policy holder remains obliged to mitigate the loss, and in particular, at the demand and cost of the insurer, to pursue the claim in its own name by means of law suit.

##### 9.4. The policy holder shall undertake to ensure that the master of the boat also fulfils the warranties set out in paragraphs 9.1. to 9.3.

#### 10. Legal consequences of breach of warranty

##### 10.1. Insurer's right of termination

If the policy holder breaches a warranty under this agreement, which he is to fulfil prior to the occurrence of an insured event, the insurer is entitled, for a period of one month after learning of the breach of obligation, to terminate the agreement without notice. The insurer does not have any right of termination if the policy holder is able to demonstrate that the breach of warranty was not the result of an intentional act or gross negligence.

##### 10.2. Scope of insurance cover in the event of a breach of warranty

If a warranty under this agreement is deliberately breached, the policy holder will lose his insurance cover. Where a warranty has been breached as the result of gross negligence, the insurer is entitled to reduce any payment of compensation in accordance with the degree of culpability on the part of the policy holder. The complete or partial loss of insurance cover for the breach of a duty of disclosure or information arising following the occurrence of an insured event is only permissible where the insurer has informed the policy holder of this legal consequence through the medium of a special written communication, e.g. by letter, fax or e-mail.

If the policy holder can demonstrate that he did not breach the warranty as a result of gross negligence, the insurance cover shall remain effective.

The insurance cover also remains effective where the policy holder demonstrates that the breach of warranty had no causal connection with the occurrence of the insured event or the determination of the insured event or the determination or the extent of the compensation payable by the insurer. This does not apply in the event that the policy holder is acting intentionally in breaching the relevant warranty.

Where the insurer opts to exercise the right of termination to which it is entitled under paragraph 10.1. the foregoing conditions shall apply nevertheless.

#### 11. Payment of compensation

- 11.1. If an excess on the part of the policy holder has been agreed, this will apply with respect to every insured event with the exception of:
  - 11.1.1. total loss.
  - 11.1.2. lightning strike.
  - 11.1.3. fire damage caused by a third party.
  - 11.1.4. losses arising when the insured object is in the custody of a carrier / transport company.
  - 11.1.5. collision damage for which a third party is fully liable.
  - 11.1.6. damage caused by breaking and entering where the insured vessel is located in a locked building which was broken into.
  - 11.1.7. damage to/loss of personal effects pursuant to paragraph 2.1.3. of these terms and conditions.

- 11.2. In the event of total loss or constructive total loss of the vessel, the insurer shall pay the insured amount less any achievable residual value, and for partial loss it will pay the repair costs (no "new for old" deduction shall apply), both up to a maximum of the agreed insured amount. A total loss is established where the vessel is lost to the policy holder and there is no prospect of recovery, in particular where it has sunk with no prospect of salvage or where it is destroyed taking into consideration its original properties and condition. A constructive total loss is established where the prospective repair costs added to the residual value exceed the agreed insured amount.

- 11.3. Each party to this agreement may demand that the value of the loss be determined by an adjuster, whereby each party will bear the cost of their own adjuster with the costs incurred in the possible appointment of an arbitrator being divided equally. The decision of the adjusters is final unless it is shown that they were manifestly not objective in reaching their decision based on the facts of the case.
- 11.4. If stolen property is recovered within two months, the policy holder is obliged to take repossession of the recovered property and return any compensation already paid in respect thereof.
- 11.5. Due payment of compensation
- 11.5.1. Compensation from the insurer is due two weeks after the end of the investigations required to determine the insured event and the extent of the insurer's obligation to pay compensation.
- 11.5.2. If these investigations have not been concluded within one month from the time that the insured event was reported, the policy holder may demand to be given advance payment equal to the minimum prospective amount that the insurer can expect to pay. This period stops running in the event that the investigations cannot be concluded for reasons for which the policy holder is culpable.
- 11.5.3. Where, as a result of the damage/loss, an official investigation is initiated against the policy holder, the authorised master of the vessel or one of its passengers, the insurer is entitled to refuse payment until the investigation is completed.

## 12. Termination upon occurrence of an insured event

- 12.1. Both parties are entitled, following each insured event, to terminate the policy in writing. The notice to terminate the agreement must be delivered in writing to the other contractual partner no later than one month following the completion of the investigations required for the determination both of the insured event itself and the extent of the compensation to be paid by the insurer.
- 12.2. Where the policy holder terminates the agreement, the termination is immediately effective once received by the insurer. The policy holder may decide, however, that the termination will become effective at a later point in time, but no later than at the end of the current insurance year. A declaration of termination issued by the insurer becomes effective one month after receipt by the policy holder.

## 13. Premature termination of the insurance agreement

Unless stipulated to the contrary elsewhere in legislation, where the agreement is terminated prematurely the insurer is only entitled to that part of the premium corresponding to the exhausted contractual period.

## 14. Disposal of the vessel

- 14.1. If the insured object is disposed of by the policy holder, at the time of the transfer of ownership the party acquiring the vessel is subrogated to the position of the policy holder enjoying the rights and subject to the obligations established under the contractual arrangement during the period of the latter's ownership.

The seller and the purchaser are jointly and severally liable for the premium payable for the insurance period during which the latter assumes the position of the former for the purposes of this agreement.

- 14.2. The insurer shall only be subject to the subrogation of the purchaser once it has learned of this fact.

The insurer is entitled to issue a written termination of the insurance agreement with the purchaser, the termination to take effect after a one-month period of notice. This termination option can only be exercised within one month of the insurer learning of the disposal.

The purchaser is entitled to issue a written termination of the insurance agreement to take effect either immediately or at the end of the current insurance period.

This right of termination can only be exercised by the purchaser within one month of the transfer of ownership, or where the purchaser was not aware of the insurance arrangement, within one month of learning of its existence.

In the event of a termination the seller is solely liable for the payment of the premium.

- 14.3. The seller or purchaser must immediately inform the insurer in writing about the fact of the disposal, giving details of the purchaser's name and address and the purchase price appending the purchase agreement where possible.

If this notification is not forthcoming, the insurer is not obliged to pay compensation if an insured event occurs later than one month after that time at which the notification should have been delivered to the insurer and the insurer can demonstrate that it would not have concluded the same agreement with the purchaser which it made with the seller. The insurer is not released from its obligation of payment of compensation where this legal consequence is out of proportion to the gravity of the infringement.

Contrary to the foregoing condition, the insurer is obliged to pay compensation where it was aware of the disposal at the time that it should have received notification thereof, or where, at the time the insured event occurred, the period for exercising the option to terminate has expired without it actually having been exercised.

- 14.4. In the event that the purchaser continues the agreement, as an amendment to paragraph 7.1, the new insurance amount is taken to be the agreed purchase price as set out in the purchase agreement.

## 15. Duration and end of the agreement

- 15.1. Duration of the agreement

The agreement is concluded for the period specified in the insurance policy.

- 15.2. Automatic renewal

Where the contractual period is for one year or more, the agreement will be renewed for a further year each time it is not cancelled by one of the contractual parties not later than one month before the end of the respective insurance year. The receipt of the cancellation notification by the other contractual party is decisive in determining if this notice period is satisfied.

- 15.3. End of the agreement

Where the contractual period is less than one year, the agreement will cease to have effect at the specified time without the requirement for the issue of a termination notice.

## 16. General Conditions

- 16.1. The policy holder may not assign its rights under this agreement or pledge these as security without the express agreement of the insurer.

- 16.2. All declarations and notifications required by the insurer from the policy holder can be communicated with equivalent legal effect to Hamburger Yacht-Versicherung Schomacker Versicherungsmakler GmbH.

- 16.3. Where nothing to the contrary has been agreed within these terms and conditions nor has been specially agreed elsewhere, this agreement shall be governed by the law of Germany. The provisions of the German Insurance Contract Act (VVG) also apply where applicable.

- 16.4. Court - Claims against the insurer

The competent court for hearing claims arising under this agreement against the insurer will be the court with jurisdiction either for the insurer's registered address or for the branch office responsible for the insurance agreement. If the policy holder is a natural person, the claim may be heard before that court with jurisdiction for the district in which the person has his registered address or, where the person does not have a registered address, his usual place of residence.

- 16.5. If several insurers are joined to the insurance policy, these co-insurers are severally liable to the extent of their individual interest. They are not jointly liable. All measures undertaken by the leading insurer are binding for the co-insurers. Legal disputes arising under this agreement require only to be asserted against the leading insurer for its part. The co-insurers acknowledge that decisions entered against the leading insurer are likewise binding against them. The insurance broker is entitled to substitute the current insurer for another without seeking the consent of the policy holder. The policy holder has the right to demand written disclosure detailing which insurers are underwriting its insurance policy and what interest each holds.