

Aviation

Third Party-/Passenger Legal Liability Insurance Conditions AMU 300/04 E (Aircraft holders, air carriers)

§ 1 Coverage

1. The Insurer shall provide cover where a claim is made against the Insured by a third party, following a loss which has occurred during the policy period, on the basis of legal liability regulations under civil law, due to death, injury or impairment of the health of persons (bodily injury) or to the damage or destruction of property (property damage).

2. An insured loss shall be deemed to mean any occurrence which results in a liability claim against the Insured.

3. The cover shall comprise legal liability

3.1 (Aircraft Holder's Liability Insurance) arising out of the use of aircraft, due to damage caused to persons and property not being transported in the aircraft;

3.2 (Air Carrier's Liability Insurance) arising from the contractual transportation of passengers or other persons (but not during flying instruction) including baggage and air freight without declared value; coverage shall also extend to legal liability arising from loss or damage due to the delayed transportation of persons or property or the disappearance of property (pure financial loss);

3.3 (Tour Operator's Legal Liability Insurance) as a contractual air carrier other than the operating carrier, arising from the transportation of passengers, including baggage without declared value.

4. The insurance policy, endorsements thereto and the proposal form indicate the risks, aircraft or type of insurance for which cover exists in each case.

§ 2 Parties included under the insurance cover

1. The cover shall also comprise the personal legal liability

1.1 of the Insured (holder of aircraft) and of all persons who with the knowledge and intent of the Insured are involved in the piloting and operation of the aircraft;

1.2 of the Insured's own staff, insofar as they are entitled to carry out work or activities involving aircraft hereby insured;

1.3 of the persons acting for the contracting air carrier, but excluding the operating air carrier and his staff.

1.4 of a carrier chartering the insured aircraft without flying it himself. Coverage shall only apply to the extent that the carrier has not insured the liability risk under other policies.

2. Persons included under the insurance cover may enforce their claims independently.

§ 3 Territorial limits

The insurance shall apply to loss events occurring worldwide with the exception of the USA.

§ 4 Exclusions

1. No cover shall apply

1.1 if, at the time of the loss event, the aircraft's condition did not comply with the statutory provisions and official regulations regarding keeping and operation of aircraft and/or where any official licences required had not been issued;

1.2 if, at the time of the loss event, the operator was not fully licensed according to the legal requirements;

1.3 if, at the time of the loss event, the pilot(s) of the aircraft did not have the required licences, necessary authorisations or certificates;

1.4 in respect of liability claims, based on contract or special agreements which exceed the scope of the Insured's legal liability;

1.5 in respect of losses in connection with

1.5.1 any high-energy ionising radiation (e.g. alpha, beta and gamma rays emitted by radioactive substances, and also neutrons or radiation produced in particle accelerators) and laser and maser radiation;

1.5.2 any explosive nuclear component or parts thereof;

1.6. under Third Party Legal Liability insurance in respect of losses caused by environmental damage and all other losses resulting therefrom, vibration or electrical or electromagnetic interference.

The exclusion shall not apply if the losses have been caused by fire, explosion, collision, crash or a recorded in-flight emergency causing abnormal aircraft operation.

1.7. due to losses connected with war and civil war, other hostile activities, any detonation of any weapon of war employing atomic or nuclear fission or fusion, any other effects of radiation or radioactive force or matter, strike, lock-out, riot, civil commotion, labour disturbances and any acts of terrorism or sabotage (see however item 2 of Special Conditions)

1.8 due to losses associated with acts decreed by public authorities or other sovereign activity.

- 1.9. in respect of liability claims
 - 1.9.1 due to bodily injury which constitute accidents at work or occupational disease within the Insured's enterprise in accordance with the relevant social security code;
 - 1.9.2 by the Insured's relatives, insofar as a social insurance institution or a pension-paying institution under public law is obliged to pay benefit, and also due to property damage;
 - 1.9.3 between several Insured with the exception of members of groups of registered users within the context of § 1, item 3.2;
 - 1.9.4 by the holder or owner of the aircraft or pilot in command against parties included under the insurance cover;
 - 1.9.5 by parties included under the insurance cover among one another due to property damage;
 - 1.9.6 by partners of unincorporated commercial companies with unlimited personal liability;
 - 1.9.7 by legal representatives of legal entities under civil or public law and unincorporated associations, unless the loss is not causally related to their respective function;
 - 1.9.8 by partners of a registered partnership;
 - 1.9.9 by liquidators.

The exclusions under 1.9.3 to 1.9.9 are also extended to liability claims arising from losses which are caused by relatives of the persons mentioned herein.

A relative shall include spouses, domestic partners as defined in the *Lebenspartnerschaftsgesetz* (law on domestic partnerships) or comparable partnerships according to the laws of other states, parents and children, adoptive parents and children, parents-in-law and children-in-law, stepparents and stepchildren, grandparents and grandchildren, brothers and sisters and foster parents and foster children (persons who are associated by a family-like, long-standing relationship similar to that between parents and children), who are living in the Insured's household at the time of the occurrence of a loss;

- 1.10 in respect of liability claims attributable to asbestos, or substances or products contain-ing asbestos. The exclusion shall not apply to losses due to fire, explosion, collision, crash or a recorded in-flight emergency causing abnormal aircraft operation.
- 1.11 claims arising as a result of damage due to crop spraying or dusting, provided no separate coverage has been agreed for these.
- 2. Insurance claims from any persons in respect of losses which they have brought about deliberately shall be excluded.

§ 5 Inception and expiry of cover

- 1. Cover shall commence as soon as the first premium is paid but not earlier than on the date specified in the insurance policy. Where the first premium is not requested until after that date but is then paid within 14 days, cover shall commence on the date specified in the insurance policy.
- 2. Cover shall cease upon written notice from one of the parties to the contract
 - 2.1 upon expiry of the agreed period of one year. Notice of cancellation must be received at least three months prior to expiry, otherwise the insurance shall be extended each time for a further one-year period;
 - 2.2 if the Insurer has made a payment under § 7 or legal proceedings have been instituted against the Insurer for such payment.
- 3. The policy shall end without any notice of cancellation where the agreed period is less than one year.

Notice of cancellation must be received no later than one month after payment or - in the event of legal action - following a withdrawal of the action, an acknowledgement, compromise settlement or final ruling. The cancellation shall take effect one month after receipt of such notice.

§ 6 Premium Payment, Default

- 1. Unless otherwise agreed, the Insured shall pay the first or single premium, including insurance tax, without delay after the policy has been effected. Subsequent premiums shall fall due at the beginning of the premium period in question.
- 2. Where the first or single premium is not paid on time, the Insurer may withdraw from the contract for as long as the premium has not been paid. If the Insurer has not pursued payment of this premium through the courts within three months of the Insured's receipt of the insurance policy, the policy shall be deemed to have been rescinded. In such an event the Insurer may make a reasonable administrative charge. If the premium has still not been paid at the time of a loss event, the Insurer shall be released from the duty to indemnify.
- 3. Where a subsequent premium is not paid on time, the Insurer may give the Insured written notice, at the latter's expense, to pay within not less than two weeks. If at the end of this period the Insured has not paid the premium, interest or costs stated, the following shall apply:
 - 3.1 No cover shall apply in respect of losses occurring after expiry of the said period of notice where the Insured was made aware of the legal consequences of this time limit.
 - 3.2 The Insurer can cancel the policy without giving notice. Cancellation may be announced at the

same time as the time limit for payment is set. In this case, cancellation shall take effect at the end of the said time limit, provided that this was stated in the written notice. The effects of cancellation shall cease if payment of the amounts outstanding is made within one month of notice of cancellation being given or, if cancellation was linked to the setting of a time limit for payment, within one month of the end of the time limit for payment. However, any loss occurring in the meantime shall not be covered.

- 3.3. Where the annual premium is paid in instalments, the remaining instalments of the annual premium shall fall due immediately.
- 3.4 Outstanding subsequent premiums may only be pursued through the courts within one year of expiry of the time limit.
4. Where it is agreed that the Insurer may debit the premiums due from an account and, for reasons attributable to the Insured, the amount cannot be debited at the proper time or the Insured countermands a justified debit from his account, he shall then be in default and the Insurer may charge the Insured the costs arising therefrom. The Insurer shall also be entitled, though not bound, to make further attempts to debit the amount due.

Where the direct debit cannot take place for reasons beyond the Insured's control, the Insured shall not be deemed to be in default unless he fails to pay within the proper time after being requested in writing to do so by the Insurer.

Where, owing to direct debit authorisation being withdrawn or for any other reasons, an amount cannot be debited, the Insurer may choose not to make any further attempts to debit the amount and make a written demand to the Insured for payment by means of a transfer.

5. Where the policy is terminated early, the Insurer shall only be entitled to that portion of the premium corresponding to the period of insurance which has elapsed.

§ 7 Extent of Compensation

1. The Insurer's performance shall include the examination of liability, defence against unjustified claims and refund of the indemnity which the Insured is required to pay by law or on the basis of an acknowledgement given or approved by the Insurer, of a compromise settlement concluded or approved by it, or of a judicial decision. Where the obligation to pay has been established, the indemnity must be paid immediately.

The insurance shall also cover costs of defence incurred with the Insurer's agreement during criminal or regulatory offence proceedings instituted due to an act which could result in the Insured being liable towards a third party.

If the Insured is required by law to pay a security for a pension due following a loss occurrence, or if he is permitted to avert enforcement of a court decision through payment of a security or deposit, then the Insurer shall be obliged to pay the security or make the deposit in his place.

2. The sums insured applying to the insurance contract shall in each case form the Insurer's maximum limit of indemnity in each and every loss event.

A series of losses related in time and having the same cause shall be deemed to be a single loss event.

3. Where the Insured makes good an indemnifiable loss himself, then only pure costs without any profit element shall be indemnified.

4. Where in the event of a loss and litigation a legal dispute concerning the claim arises between the Insured and the injured party or his legal successors, the Insurer shall conduct the legal dispute at its own expense on behalf of his Insured.

5. Except in the case of losses within the USA and Canada, expenses incurred by the Insurer for costs shall be paid in addition to the limit of indemnity.

Costs shall include lawyer-, expert-, witness- and court costs; expenses incurred in order to avert or minimise loss during or after the loss occurrence and also loss adjustment expenses, including travelling expenses which are not incurred by the Insurer itself. This shall apply even if these costs are incurred on the Insurer's instructions.

Where the liability claims exceed the limit of indemnity, the Insurer shall only be required to bear the costs of court proceedings in the proportion which the limit of indemnity bears to the total amount of the claims, even if several court cases arising from a single loss event are involved.

6. Where the Insured is required to make pension payments to the injured party and the capital value of the pension exceeds the limit of indemnity or the residual amount of the limit of indemnity after deduction of any other indemnity payments arising from the loss occurrence, the pension payable shall only be refunded in the proportion which the limit of indemnity or its residual amount bears to the capital value of the pension. The Insurer shall upon request provide information about the way the capital value of the pension is calculated.

7. Where the Insurer calls for a liability claim to be settled through acknowledgement, satisfaction or compromise settlement and this fails through the opposition of the Insured, the Insurer shall not then be required to pay additional expenditure in respect of the principal claim, interest and costs arising from the time of refusal.

§ 8 Claims Procedure

1. Each loss event must be reported to the Insurer without delay, at the latest within one week.

Where a preliminary proceeding is held, an action brought, a fixed penalty order, regulatory offence notice or default summons issued, the Insurer must be notified of this without delay, even if the loss event itself has already been reported.

Where an injured party makes a claim against the Insured, the latter shall be obliged to give notification thereof within a week of the claim being made.

Where a claim is made against the Insured through the courts, legal aid is applied for, or a third party notice is served on him by the courts, the Insured must also report this without delay. The same shall apply in the event of seizure, temporary injunction or proceedings for the preservation of evidence.

2. The Insured shall, in compliance with the Insurer's instructions, be obliged to avert and minimise loss as far as possible and to do everything in his power to clarify the loss, provided he is not expected to do anything unreasonable. He must support the Insurer in the defence of the claims and during loss adjustment and claims settlement, provide him with comprehensive and truthful loss reports, notify him of all circumstances which may be of relevance to the claim and send all documents which may, in the Insurer's opinion, be of relevance for assessment of the claim.
3. Where a liability claim ends in litigation, the Insured shall leave the conduct of the proceedings to the Insurer, grant the lawyer appointed or designated by the Insurer power of attorney, and provide him with all explanations considered necessary by him or the Insurer. He must object within the specified deadline to all default summonses or orders given by administrative authorities for damages, or pursue the necessary legal remedies, without waiting for instructions from the Insurer.
4. The Insured shall not be entitled to acknowledge or satisfy a liability claim in full, in part or by compromise settlement, without the Insurer's consent. If he nevertheless does so, the Insurer shall be released from its duty to indemnify, unless the Insured could not in the circumstances refuse satisfaction or acknowledgement without obvious unfairness.
5. Where, due to altered circumstances, the Insured acquires the right to demand the cancellation or reduction of a pension which is to be paid, he shall be obliged to allow the Insurer to exercise this right in his name. The provisions under items 2 to 4 shall apply accordingly.
6. The Insurer shall be authorised, within the limit of indemnity, to make all declarations which it deems appropriate for the settlement or defence of claims in the name of the Insured.

§ 9 Breach of Obligations

Where a duty under § 8 is breached, the Insurer shall be released from the duty to indemnify unless the breach was neither deliberate nor the result of gross negligence. In the case of gross negligence the Insurer shall remain liable to the extent that the breach affected neither the assessment of the loss nor the amount of indemnity due from the Insurer. Where the breach is of duties intended to avoid or minimise loss, the Insurer shall remain liable in the case of gross negligence insofar as the extent of the loss would not have been any less if the duties had been properly complied with.

§ 10 Assignment

1. Where the insurance covers liability claims against persons other than the Insured, all the provisions in the insurance contract which relate to the Insured shall also apply accordingly to these other persons. The Insured shall, besides the other insured persons be responsible for complying with the duties hereunder.
2. Entitlements hereunder shall not be assigned prior to final assessment without the Insurer's consent.

§ 11 Disclosures prior to Insurance Contract

1. The Insured must disclose to the Insurer all facts of which he is aware which are material to the acceptance of the risk. Material facts are those which are likely to affect the Insurer's decision whether to accept the risk at all and, if so, at what terms. A fact about which the Insurer has raised questions expressly or in writing shall be deemed to be material.

If, contrary to this provision, a material fact is not disclosed, the Insurer may rescind the contract. The same shall apply where a material fact was not disclosed because the Insured fraudulently concealed such fact.

The Insurer may not rescind the contract if he was aware of the undisclosed material fact or if such non-disclosure was not the fault of the Insured.

2. The Insurer may also rescind the contract if a material fact has been misrepresented.

The Insurer may not rescind the contract if he was aware of the misrepresentation or if the misrepresentation was not the fault of the Insured.

3. Where the contract is effected by an authorised representative or agent without representative authority, the Insurer's right to rescind the contract shall take into account not only the knowledge and deception on the part of the agent, but also the knowledge and deception on the part of the Insured. The Insured may only plead that he was not to blame for a material fact not being disclosed or being misrepresented if neither he nor the agent was to blame.

4. The contract may only be rescinded within a period of one month. This period shall commence from when the Insurer becomes aware of the breach of the duty of disclosure.
5. Where the Insurer rescinds the contract following the occurrence of a loss, the duty to indemnify shall remain if the fact which was not disclosed had no effect on the occurrence of the loss and the amount of indemnity due from the Insurer.
6. The Insurer's right to rescind the contract on the grounds of wilful deception regarding the material facts shall remain unchanged.

§ 12 Time Limits

1. Rights of action arising out of the insurance contract shall be time-barred after two years. The period of limitation shall commence at the end of the year in which the benefits can be claimed.
2. Where a claim by the Insured has been notified to the Insurer, the statute of limitation shall be suspended until the Insurer's written decision has been received.
3. The Insurer shall be released from the duty to indemnify if the claim for indemnity is not enforced within six months. The period shall not begin until the Insurer has declined liability in respect of the claim in writing, drawing the Insured's attention to the legal consequences of expiry of the said period.

§ 13 Right to object

1. Where the conditions of insurance applying to the contract or other consumer information relating to the content of the contract are not sent until the insurance policy is sent, the Insured shall have a statutory right to object and must be advised of the existence of such right.
2. Where the Insured is not advised of the said right, or where the Insured does not have the policy, conditions of insurance or consumer information in full, he may object at any time up to one year after payment of the first premium.

§ 14 Jurisdiction

1. The insurance contract is based on the law of the Federal Republic of Germany.

For actions brought against the Insurer as a result of this insurance contract, jurisdiction shall be decided according to the location of the Insurer's registered office or of the office of the branch responsible for the contract. Where an insurance agent has been involved in arranging the contract, the court for the place where the insurance agent worked from at the time of arranging or effecting the insurance, or the agent's place of residence in the absence thereof, shall also have jurisdiction.
2. Actions by the Insurer against the Insured may be brought before the court with jurisdiction for the

Insured's place of residence. Where the Insured has effected the insurance at his commercial establishment, the Insurer may also assert his claims before the court responsible for the registered office or branch of the commercial establishment.

§ 15 Notifications and declarations

1. All notifications and declarations intended for the Insurer shall be given in writing and sent to the address specified for this purpose in the insurance policy or endorsements thereto.
2. Where the Insured has changed his address but has not advised the Insurer of the said change, for the purpose of making a declaration to the Insured it shall be enough for a recorded delivery letter to be sent to the last address known to the Insurer. The declaration shall take effect from when it would normally have been received by the Insured if the address had not been changed.

SPECIAL TERMS AND CONDITIONS

1 Inclusion of pure financial loss in Aircraft Holder's Liability Insurance

- 1.1 In supplementation of § 1.1 the insurance shall also cover legal liability for the pure financial loss suffered by third parties due to a loss occurrence arising as a result of a crash or emergency landing of the insured aircraft.
- 1.2 Coverage shall exclude liability claims in respect of
 - 1.2.1 non-adherence to time limits, deadlines, quotations and estimates;
 - 1.2.2 deliberate deviation from legal or administrative regulations or other deliberate breach of duty;
 - 1.2.3 the loss or disappearance of property including money, securities and valuables.

2. Re-inclusion of war and terrorist risk in Aircraft Holder's and Air Carrier's Liability Insurance

- 2.1 If and to the extent that pursuant to European law a duty to provide coverage exists, in deviation from § 4.1.7 and § 4.1.8 coverage shall extend to losses due to
 - 2.1.1 war, civil war, strike, lock-out, riot, civil commotion, labour disturbances, acts of terrorism or sabotage or other hostile acts;
 - 2.1.2 acts decreed by public authorities or other sovereign activity.
- 2.2 Re-inclusion shall apply subject to the agreed limits of indemnity and annual aggregate limits for Aircraft Holder's and Air Carrier's Liability

Insurance and limited to the limits of indemnity required by European law although, in Aircraft Holder's Liability Insurance, to no more than 50 million USD per event and insurance period.

The limit of indemnity for Aircraft Holder's Liability Insurance may be increased by Special Agreement.

2.3 Automatic termination of this extension of coverage

The insurance coverage under the above extension shall terminate automatically if the following circumstances should arise:

- outbreak of war between two or among more than two of the following states: France, People's Republic of China, Russian Federation, Great Britain, United States of America;
- detonation of any weapon of war employing atomic or nuclear fission or fusion or any other effects of radiation or radioactive force or matter;
- seizure of the insured aircraft.

If an insured aircraft is airborne at the point in time that the prerequisites for automatic termination of coverage occur, coverage shall not terminate until the aircraft has landed and all its passengers have disembarked.

2.4 Cancellation

The above extension of coverage can be cancelled by the Insurer and/or the Insured with a period of notice of seven days beginning at 23:59 hrs GMT on the day on which written cancellation is received.