

## **AMERICAN YACHT FORM R.12**

### **WARRANTIES AND GENERAL CONDITIONS** **(Applicable to all coverages unless otherwise indicated)**

#### **PRIVILEGES**

In port and at sea, under power or sail, in docks and graving docks, in hauling and launching, on ways, gridirons pontoons, and on shore. With leave to sail with or without pilots to tow and assist vessels or craft in all situations and to be towed and to go on trial trips.

#### **PRIVATE PLEASURE WARRANTY**

Warranted to be used solely for private pleasure purposes and not to be hired or chartered unless approved and permission endorsed hereon.

#### **CONTINUATION CLAUSE**

If the vessel insured hereunder is at sea, at the expiration of this policy, the risk may be continued until the arrival of the vessel at her port of destination on her being moored therein twenty-four (24) hours in good safety, provided notice be given to the Assurers and additional premium paid as required.

#### **TRANSFER OF INTEREST**

This insurance shall be void in case this Policy or the interest insured thereby shall be sold, assigned, transferred or pledged without the previous consent in writing of these Assurers.

#### **PERSONAL NEGLIGENCE**

Personal negligence or fault of the Owner or Assured in the navigation of the yacht or privity or knowledge in respect thereto (excepting loss, damage or liability wilfully or intentionally caused by the Owner or Assured) shall not relieve the Assurers of liability under this Policy.

#### **OTHER INSURANCE**

If a named Assured has other insurance against a loss covered by any section of this Policy, the Assurers shall not be liable under this Policy for a greater proportion of such loss than the applicable amount stated bears to the total amount of all valid and collectible insurance against such loss. If an Assured other than a named Assured has other insurance against a loss covered by any section of this Policy, this insurance shall be excess over other such insurance.

#### **NOTICE OF LOSS AND FILING OF PROOF**

It is agreed by the Assured to report immediately to the Assurers or to their representative which shall have issued this Policy every occurrence which may become a claim under this Policy, and shall also file with the Assurers or their representative, a detailed sworn proof of loss and proof of interest and/or receipted bills in case of a partial loss, within ninety (90) days from date of loss.

## **PAYMENT OF LOSS**

In case of loss payable under this Policy, such loss to be paid within ninety (90) days after satisfactory proof of loss and proof of interest in the property insured, all indebtedness of the Assured being first deducted.

## **SUBROGATION**

It Is agreed that upon payment of any loss, damage, or expense the Assurers are to be subrogated to all the rights of the Assured to the extent of such payment.

## **TIME FOR SUIT AGAINST THE ASSURERS**

No suit or action on this Policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Assured shall have fully complied with all the requirements of this Policy, nor unless commenced within one (1) year from the date of the happening or the occurrence out of which the claim arose, provided that where such limitation of time is prohibited by the laws of the state wherein this Policy is issued, then, and in that event, no suit or action under this Policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such state.

## **ACTION AGAINST THE ASSURERS**

Any person or organization or the legal representative thereof who has secured judgement against the Assured shall be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. Bankruptcy or insolvency of the Assured or of the Assured's estate shall not relieve the Assurers of any of their obligations thereunder.

## **LEGAL REPRESENTATION AND CO-OPERATION CLAUSE**

The Assured shall co-operate with the Assurers and shall not assume any obligation, admit any liability or incur any expense for which the Assurers may be liable, without the written approval of the Assurers, except as may be necessary and permitted to safeguard the Yacht under the "SUE and LABOR" clause in section "A" of this Policy. In case the liability of the Assured shall be contested with the written approval of the Assurers first obtained, the Assurers will pay the cost and expense of such defense, in which event the Assurers shall have the option of naming the attorneys who shall represent the Assured in said defense, and, if such option is exercised, shall have the direction and control thereof. The Assured shall whenever required, attend hearings and trial and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits and limitations proceedings.

## **EXAMINATION UNDER OATH**

The Assured as often as may be reasonably required, shall exhibit to any person designated by the Assurers all that remains of any property herein described, and shall submit, and insofar as is within his of their power cause his or their employees, members of the household and other to submit to examinations under oath by any person named by the Assurers and subscribe the same; and as often as may be reasonably required, shall produce for examination all writings, books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, as such reasonable time and place as may be designated by the Assurers or their representative, and shall permit extracts

and copies thereof to be made. No such examinations under oath or examination of books or documents, nor any other act of the Assurers or any of their employees or representatives in connection with the investigation of any loss or claim hereunder, shall be deemed a waiver of any defense which the Assurers might otherwise have with respect to any loss or claim, but all such examinations and acts shall be deemed to have been made or done without prejudice to the Assurers' liability.

#### **MISREPRESENTATION OR FRAUD**

This entire Policy shall be void if the Assured or their representative has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Assured therein, or in case of fraud or false swearing by the Assured touching any matter relating to this insurance or the subject thereof whether before or after a loss.

#### **NOTICE OF CANCELLATION AND RETURN PREMIUMS OR CANCELLATION**

This Policy may be cancelled by the Assured by surrender thereof to the Assurers or their representative by mailing to the Assurers or their representative written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Assurers or their representative by mailing to the Assured at the address shown in this Policy or at last known address, written notice stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date of the cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the Assured or by the Assurers or their representative shall be equivalent to mailing.

If the Assured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure.

If the Assurer cancels, earned premium shall be computed pro-rata.

Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Assurers or their representative's check mailed or delivered as aforesaid shall be sufficient tender of any refund of premium due to the Assured.

#### **PREMIUM FULLY EARNED**

There shall be no return of premium under any section of this policy if the insured yacht is a total or constructive total loss by a peril insured against.

#### **PARAMOUNT EXCLUSIONS**

Any claim for loss, damage or expense caused by or resulting from capture, seizure, arrest, restraint or detainment or the consequences thereof or of any attempt thereat or any taking of the vessel, by requisition or otherwise, whether in time of peace or war and whether lawful or otherwise: also from all consequences of hostilities or warlike operations (Whether there be a declaration of war or not) but the foregoing shall not exclude collision or contact with aircraft, rockets or similar missiles, or with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather, fire or

explosion unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the collision, any other vessel involved therein is performing) by a hostile act by or against a belligerent power, and for the purpose of this warranty "power"<sup>1</sup> includes any authority maintaining naval, military or air forces in association with a power; also warranted free, whether in time of peace or war. from all loss, damage or expense caused by any weapon of war employing atomic or nuclear fission and/or other fusion or other reaction or radioactive force of matter. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising there from, or piracy.

This Policy is made and accepted subject to the foregoing stipulations and conditions, and to the conditions on the following pages which are hereby specially referred to and made a part of this Policy, it being understood and agreed that in the case of any conflict or inconsistency the foregoing provisions shall prevail over those which follow; provided, however, that with respect to any insurance under Section "E" of this policy the liability of the Assurers for the term above stated shall be in all respects as provided in such Section "E", unaffected by any other condition or provision of this Policy.

## **SECTION "A" - HULL INSURANCE**

### **PROPERTY COVERED**

Upon the Hull, Spars, Sails, Fittings, Gear and Equipment, Apparel, Provisions, Stores, Machinery, Boats and other Furniture and Furnishings of and in the yacht hereby insured, subject to all of the terms and conditions (including the Running Down Clause) of this Policy.

The foregoing does not include fishing tackle, moorings or personal property.

### **COVERAGE**

The insurance provided by this Section covers, subject to the exclusions and limitations of this Policy, against ALL RISKS of physical loss or damage to the Property covered from any external cause, as well as physical loss or damage directly caused by fire, explosions, bursting, of boilers, breakage of shafts, or any latent defect in the machinery or hull (excluding the cost and expense of repairing or replacing any defective part), provided such loss or damage has not resulted from want of due diligence or intentional damage by the owners of the Yacht or by the Assured; provided always that the amount recoverable hereunder shall not exceed the amount of insurance.

### **DEDUCTIBLE CLAUSE**

When a deductible amount is stated on this Policy, each claim for loss or damage covered under Section "A" shall be adjusted separately and from the aggregate amount of the adjusted claim, the sum so stated shall be deducted. Such deduction shall not apply in the event of Total Loss or Constructive Total Loss of the vessel covered nor shall it apply with respect to claims under the Running Down Clause.

### **EQUIPMENT SEPARATED AND ON SHORE**

It is also agreed that should any part of the furniture, boats or other property of the said yacht be separated and laid up on shore during the life of this policy, then this Policy shall cover the same to

an amount not exceeding 20% of the sum stated under the heading "Amount of Insurance". The amount attaching on the said yacht shall be decreased by the amount so covered.

#### **VALUATION CLAUSE**

The said yacht, for so much as concerns the Assured by agreement between the Assured and the Assurers is and shall be valued at the amount stated under the heading "Agreed Valuation".

#### **NEW FOR OLD**

In the event of loss or damage, cost of repairs to be paid without deduction, new for old, except with respect to sails and covers of canvas or other like materials, the Assurers shall be liable for no more than the cost of repair or a reasonable value.

#### **CONSTRUCTIVE TOTAL LOSS**

No recovery for a Constructive total loss shall be had hereunder unless the expense of recovering and repairing the vessel shall exceed the amount of insurance on hull and machinery.

#### **UNREPAIRED DAMAGE**

In no case shall the Assurers be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

#### **PROPORTION OF LOSS COVERED**

Where the amount of insurance as set forth is less than the agreed valuation stated herein, the Assurers shall be liable only for such proportion of any loss recoverable under this Section as the said amount of insurance bears to the said agreed valuation.

#### **STRIKES CLAUSE**

This insurance also covers loss of or damage to the property hereby insured caused by strikers, locked out workmen or persons taking part in labor disturbances, riots or civil commotions or caused by vandalism or persons acting maliciously.

#### **BOATS AND LAUNCHES**

The boats and launches of the yacht are insured also while afloat, whether underway or not, subject to all of the terms and conditions, including the Running Down Clause of this Policy.

#### **RUNNING DOWN CLAUSE**

And it is further agreed that if the yacht hereby insured shall come into collision with any other ship or vessel, and the Assured shall, in consequence thereof, become liable to pay, and shall pay by way of damages to any other person or persons, any sum or sums not exceeding in respect of any one such collision the value of the yacht hereby insured, we, the Assurers, will pay the Assured such sum or sums so paid up to the amount hereby insured. And in cases where the liability of the Assured has been contested, with the consent, in writing, of the Assurers, we will also pay the costs thereby incurred or paid; but when both vessels are to blame, then unless the liability of the owners of one

or both of such vessels limited by, law, claims under the Collision Clause shall be settled on the principle of CROSS LIABILITIES, as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both vessels are the property, in part or in whole, of the same owners, all questions of responsibility and amount of liability as between the two vessels being left to the decision of a single Arbitrator, if the parties agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the managing owners of both vessels, and one to be appointed by the majority in amount of the Underwriters interested in each vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding.

Provided always that the foregoing clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for removal of obstructions under statutory' powers, for injury to harbours, wharves, piers, stages and similar structures, consequent on such collisions, or in respect of the cargo or engagements of the insured yacht, or for loss of life, or personal injury.

#### **MEMBER OF THE ASSURED'S FAMILY**

It is understood and agreed that the word "Assured" whenever used in the Running Down Clause in this Section shall include, in addition to the named Assured hereunder, irrespective of interest in the insured yacht, the members of the immediate family of the Assured, domiciled with the Assured, who may, at the time liability was incurred, be operating the yacht with the prior permission of the Assured.

#### **SUE AND LABOR CLAUSE**

And in case of any loss or misfortune, it shall be lawful and necessary for the Assured, their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said yacht or any part thereof, without prejudice to this insurance; the charges whereof we, the Assurers, will pay. And it is especially declared and agreed that no acts of the Assurer or Assured in recovery, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

#### **EXCLUSIONS**

##### **THIS INSURANCE DOES NOT COVER**

1. Any loss or damage directly or indirectly caused by or resulting from wear and tear, gradual deterioration, inherent vice, marine borers, vermin or electrolysis.
2. Theft or mysterious disappearance of equipment or accessories, other than boats and launches and their motors, unless occurring in conjunction with theft of the entire yacht or unless there be visible evidence of forcible entry.
3. Any loss, damage or expense caused by or in consequence of ice and/or freezing.
4. Any loss, damage or expense directly or indirectly caused by or in consequence of faulty construction and/or improper design.

5. Any loss or damage to electrical apparatus, including wiring, directly or indirectly caused by electricity, other than lightning, unless fire ensues and then only for loss or damage by such ensuing fire.
6. Wages and/or provisions whether the average be particular or general.
7. Mechanical breakdown or derangement of machinery.
8. Any loss of use, demurrage or charter hire to the yacht insured hereunder.

#### **SECTION "B" - PROTECTION AND INDEMNITY INSURANCE**

If the Assured shall by reason of his interest in the insured yacht become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and/or expense or shall become liable for any other loss arising from or occasioned by any of the following matters or things during the currency of this Policy in respect of the yacht hereby insured, that is to say:-

##### **Property Damage (I)**

Loss of or damage to any other ship or boat or goods, merchandise, freight or other things or interest whatsoever, on board such other ship or boat, caused proximately or otherwise by the yacht insured insofar as the same would not be covered by the Running Down Clause in Section "A" of this Policy.

Loss of or damage to any goods, merchandise, freight or other things of interest whatsoever other than as aforesaid, whether on board said yacht or not, which may arise from any cause whatever;

Loss or damage to any harbor, dock (graving or otherwise), slipway, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable thing whatsoever, or to any goods or property in or on the same, however caused;

Any attempted or actual raising, removal or destruction of the wreck of the insured ship or the cargo thereof, or any neglect or failure to raise, remove or destroy the same;

The Assurers will pay the Assured such sum or sums so paid, or which may be required to indemnify the Assured for such loss; PROVIDED always that the amount recoverable hereunder in respect to any one accident or series of accidents arising out of the same event shall not exceed the sum stated under Limit of Protection and Indemnity Insurance.

##### **Bodily Injury (II)**

Loss of life, illness, or bodily injury and payments made on account of life salvage;

The assurers will pay the Assured such sum or sums so paid or which may be required to indemnify the Assured for such loss; PROVIDED always that the liability of these Assurers is limited to the sum stated under Limit of Protection and Indemnity Insurance, and subject to the same limit for each person, it being understood that this limit applies to any one accident or series of accidents arising out of the same event.

##### **Costs (III)**

And in case the liability of the Assured shall be contested in any suit or action with the consent in writing of these Assurers, we will also pay such ensuing costs as the Assured may incur as a result of such suit or action.

#### **AGGREGATE LIMIT**

The total amount recoverable under the Protection and Indemnity Insurance coverage of this Policy, for all losses, including property damage, personal injury, loss of life, payments made on account of life salvage, and costs, resulting from any accident or series of accidents arising out of the same event, shall not exceed, in the aggregate, the sum stated under Limit of Protection and Indemnity Insurance.

#### **POLLUTION**

This policy does not insure against any loss, damage, cost, liability, or expense, imposed on the Assured, arising out of the discharge, dispersal, release, or escape of oil, fuel, chemicals, waste materials, or other pollutants, but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental.

#### **MEMBERS OF ASSURED'S FAMILY**

It is understood and agreed that the word "Assured" whenever used in this Section shall include, in addition to the named Assured hereunder, irrespective of interest in the insured yacht, the members of the immediate family of the Assured, domiciled with the Assured, who may, at the time liability was incurred, be operating the yacht with the prior permission of the Assured.

#### **EXCLUSIONS:**

##### **THE ASSURERS WILL NOT BE LIABLE FOR:**

Any fine, or penalty or assessment against the Assured or yacht named herein, by any national, state or local government;

Liability of any charterer of the yacht named herein;

Any liability assumed by the Assured under any contract or agreement unless specifically endorsed hereon.

#### **SECTION "C" - OMNIBUS CLAUSE**

It is understood and agreed that the word "Assured" whenever used in the Running Down Clause in Section "A" - Hull Insurance, of this policy, and whenever used in Section "B" - Protection and Indemnity Insurance of this Policy, includes in addition to the named Assured any person, firm, corporation or other legal entity who

may be operating the vessel with the prior permission of the named Assured, but does not include a charterer or a paid Master or a paid member of the crew of the insured vessel or a person, firm, corporation or other legal entity, or any agent or employee thereof, operating a shipyard, boat repair yard, marina, yacht club, sales agency, boat service station, or similar organization.

Notwithstanding anything contained herein, the insurance provided by this clause does not cover



liability of such additional Assureds to the Assured and/or Assureds named in this Policy. This insurance is conditioned upon compliance by an Assured with all the terms, conditions and warranties applicable to the named Assured. Nothing contained herein shall be construed to increase the limits of the Assurers' liability as stated in this policy.

#### **SECTION "D" - MEDICAL PAYMENTS INSURANCE**

The Assurers agree to pay to or for each person who sustains bodily injury caused by accident occurring during the Policy period, while in or upon, boarding or leaving the yacht insured hereunder, the reasonable expense of necessary medical, surgical, ambulance, hospital and professional nursing services and, in the event of death resulting from such injury, the reasonable funeral expense, all incurred within one (1) year from the date of accident, subject to the following conditions

##### **LIMIT OF LIABILITY**

Notwithstanding the foregoing, the Assurers shall not be liable hereunder for any expense or combined expense incurred in excess of that stated, as a result of any one accident or series of accidents arising out of the same event.

##### **EXCLUSIONS**

##### **THE COVERAGE AFFORDED SHALL NOT APPLY**

1. To bodily injury to or death of any person;
  - a) To or for whom benefits are payable under any Workmen's Compensation or under the Federal Longshoremen's and Harbor Workers' Compensation Act;
  - b) Who is a trespasser in or upon or boarding or leaving the insured yacht;
  - c) Who is an employee of the Assured while engaged in the employment of the Assured except those in domestic service for whom no benefits are payable or required to be provided under any Workmen's Compensation Law;
2. To liability assumed by the Assured under any contract or agreement
3. While the yacht is being used for other than private pleasure purposes.
4. To death of the Assured or registered owner of the yacht.
5. To bodily injury to the Assured or registered owner of the yacht, unless in excess of any other medical payments insurance collectible.

##### **MEDICAL REPORTS; PROOF AND PAYMENT OF CLAIM**

As soon as practicable, the injured person or someone on his behalf shall give the Assurers written proof of claim, under oath if required, and shall, after each request from the Assurers, execute authorisation to enable the Assurers to obtain medical reports and copies of records.

The injured person shall submit to physical examination by physicians selected by the Assurers when and as often as the Assurers may reasonably require.

The Assurers may pay the injured person or any persons or organizations rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute admission of liability of the Assured, or, except hereunder, of the Assurers.

**SECTION "E" - FEDERAL LONGSHOREMEN'S AND  
HARBOR WORKERS' COMPENSATION INSURANCE**

The Assurers agree to insure under this Section for the term of the policy as stated, any liability of the Assured in respect of the insured yacht which shall arise under the Unit States Longshoremen's and Harbor Workers' Compensation Act, U.S. Code (1946) Title 33, Sections 901-49, and all laws amendatory thereof or supplementary thereto which may be or become effective while this Section of the Policy is in force.

**SECTION "F" – SERVICE OF SUIT**

It is agreed that in the event of the failure of the insurers to pay an amount claimed to be due, under this policy, the Insurers, at the request of the insured or reinsured will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising out of the suit will be determined in accordance with the law and practice of such Court. Service of process in such suit will be made upon: Mendes & Mount, 3 Park Avenue, New York, NY 10016 and in any suit instituted against any of the parties upon this contract, the Insurers will abide by the final decision of such court or any Appellate Court in the event of an appeal. Mendes & Mount are authorized and directed to accept service of process on behalf of underwriters in any such suit and/or upon the request of the insured or reinsured to give a written statement to the insured or reinsured that they will enter a general appearance upon the Insurers behalf in the event a suit is instituted.

In addition, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the underwriters designate the Superintendent, Commissioner or Director of Insurance or other office specified for the purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon who may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or reinsured or any beneficiary hereunder arising out of this insurance or reinsurance contract and hereby designate the above-named as the person to whom the said officer is authorised to mail such process or true copy thereof.