

CONTRACTORS "ALL RISKS" POLICY

IMPORTANT NOTICE

This Policy is an important document. You are requested to examine it carefully, with particular attention to the detailed terms, exclusions and conditions. If anything is unclear, incorrect or it is not in accordance with your intentions, please contact us or your Insurance Broker/Agent immediately.

PERSONAL INFORMATION COLLECTION STATEMENT

The information you provided to The Tokio Marine and Fire Insurance Co. (HK) Ltd. ("the Company") is collected to enable the Company to carry on insurance business and may be used for the purpose of:

- any insurance or financial related product or service or any alterations, variations, cancellation or renewal of such product or service;
- any claim or investigation or analysis of such claim; and
- exercising any right of subrogation

and may be transferred to

- any related company or any other company carrying on insurance or reinsurance related business or an intermediary of a claim or investigation; or other service provider providing services relevant to insurance business for any of the above or related purposes;
- any association, federation or similar organization of insurance companies ("the Federation") that exists or is formed from time to time for any of the above or related purposes or to enable the Federation to carry out its regulatory functions or such other functions that may be assigned to the Federation from time to time and are reasonably required in the interest of the insurance industry or any member(s) of the Federation;
- any members of the Federation by the Federation for any of the above or related purposes; and
- government agencies and authorities as required or permitted by law

Moreover, the Company is hereby authorized to obtain access to and/or to verify any of your data with the information collected by the Federation from the insurance industry.

You have the right to obtain, to access to and to request correction of any personal information concerning yourself held by the Company. Requests for such access can be made in writing to our Compliance Officer, 27A, United Centre, 95 Queensway, Hong Kong.

1. NOW THIS POLICY WITNESSETH that in consideration of the Insured having paid or agreed to pay to The Tokio Marine and Fire Insurance Co. (HK) Ltd. (hereinafter referred to as "the Company") the premium stated in the said Schedule.

1.1 THE COMPANY HEREBY AGREE subject to the terms, exceptions and conditions contained herein or attached hereto or endorsed hereon that if during the Period of Insurance stated in the said Schedule or during any further period in respect of which the Insured shall have paid and the Company shall have accepted premium the Insured shall sustain loss or damage or shall incur liability in the circumstances provided for by this Policy and defined herein the Company shall indemnify the Insured in the manner hereinafter described.

2. GENERAL EXCEPTIONS

2.1 The Company shall not indemnify the Insured in respect of loss, damage or liability directly or indirectly caused by or arising out of :

2.1.1 war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, military or usurped power or persons acting on behalf of or in connection with any political organisation with activities directed towards the overthrow or influencing of a government, de jure or de facto, by force, confiscation, nationalisation, commandeering, requisition or destruction or damage by order of any government, de jure or de facto, or by any public authority;

2.1.2 strike, riot, lock out, civil commotion or persons taking part in labour disturbances;

2.1.3 acts of terrorism committed by a person or persons acting on behalf of or in connection with any organisation. For the purpose of this exclusion "terrorism" means the use of violence for political ends and includes the use of violence for the purpose of putting the public or any section of the public in fear;

2.1.4 nuclear weapons, material, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel and for the purposes of this exception combustion shall include any self-sustaining process of nuclear fission.

2.2 In any action, suit or other proceeding where the Company allege that by reason of the provisions of exceptions 2.1.1, 2.1.2 and 2.1.3 above any loss damage or liability is not covered by this insurance the burden of proving that such loss damage or liability is covered shall be upon the Insured.

2.3(A) Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

(i) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretations or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programme or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

(ii) However, in the event that a peril listed below results from any of the matters described in paragraph (i) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by the Policy directly caused by such listed peril.

Listed Perils:

Fire

Explosion

2.3(B) Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost to replace, repair or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any ELECTRONIC DATA contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, not to exceed HKD 1,000,000 any one occurrence, incurred by the Insured in recreating, gathering and assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Insured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

2.4 Terrorism

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Company allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

2.5 Sanction Limitation and Exclusion Clause

No Insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

3. **SECTION I - MATERIAL DAMAGE**

3.1 The Company shall indemnify the Insured in respect of loss of or damage to the Insured Property described in the Schedule whilst at the Site during the Period of Insurance arising from any cause whatsoever not hereinafter excluded.

3.2 The Company shall not indemnify the Insured in respect of that part of the Works :

3.2.1 which has been taken into use or occupation by the Employer from the time of such taking into use or occupation or

3.2.2 for which a certificate of completion has been issued from the expiry of 28 days from the date of completion certified therein;

3.2.3 whichever of 3.2.1 or 3.2.2 is the earlier unless such loss or damage be occasioned during the Maintenance Period stated in the Schedule and

- was caused by an occurrence during the Construction Period stated in the Schedule, or
- was caused by an insured contractor in the course of complying with his obligations under the maintenance and defects liability clauses of the Contract.

3.3 Provided that the total liability of the Company under this Section shall not exceed the Sum Insured shown in the Schedule for each item of the Insured Property.

EXCEPTIONS TO SECTION I

- 3.4 The Company shall not indemnify the Insured in respect of :
- 3.4.1 loss or damage due to any fault, defect, error or omission in or failure of any design plan or specification;
 - 3.4.2 loss or damage due to defect in material or workmanship but this exception shall be limited to that part of the Insured Property directly affected and shall not exclude loss or damage to other parts of the Insured Property resulting from an accident due to such defect;
 - 3.4.3 loss of or damage to any item of machinery forming part of the Works or Constructional Plant due to its own explosion, mechanical or electrical, breakdown or derangement but this exclusion shall not be deemed to exclude damage to other parts of the Works or Constructional Plant arising as a consequence of such explosion, breakdown or derangement;
 - 3.4.4 loss of Insured Property due to it being stolen or otherwise missing from the Site unless such loss is identifiable by the Insured with a specific occurrence;
 - 3.4.5 loss of or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes and securities;
 - 3.4.6 loss of use, liquidated damages, penalties, performance guarantees or other consequential losses;
 - 3.4.7 loss or damage due to wear and tear, rust, mildew or other deterioration due to gradually operating causes;
 - 3.4.8 the cost of maintenance;
 - 3.4.9 loss of or damage to any locomotive, waterborne vessel, aircraft or vehicle other than any land vehicle which is used solely on the Site and which is not used on any public road or public highway to which any road traffic legislation applies;
 - 3.4.10 damage to tyres whilst attached to a vehicle or plant unless the vehicle or plant is damaged at the same time;
 - 3.4.11 loss or damage due to cessation of work whether total or partial.

CONDITIONS TO SECTION I

- 3.5 The Sum Insured shall in respect of Item 4 in the Schedule represent the new replacement value inclusive of erection, freight and customs.
- 3.6 If in the event of loss or damage to the Insured Property under Item 4 it is found that the Sums Insured are less than the amounts required to be insured the amount recoverable under this Policy shall be reduced in such proportion as the Sums Insured bear to the amounts required to be insured.
- 3.7 In the event of loss or damage to the Insured Property under Item 4 indemnifiable under this Policy the basis of loss settlement shall be :
- 3.7.1 in the case of damage which can be repaired, the costs of necessary repairs without deduction for depreciation, however indemnification shall be limited to costs not exceeding the actual value of the damaged property;
 - 3.7.2 in the case of a total loss, the actual value of the insured property immediately before the occurrence of the loss less salvage.
- 3.8 In the event of loss or damage to the Insured Property the insurance hereunder shall be maintained in force during the Period of Insurance for the Sum Insured the Insured undertaking to pay an additional premium at the agreed rate on the amount of any loss exceeding HK\$100,000, pro rata from the date of such loss or damage to the expiry of the Period of Insurance but this additional premium shall be disregarded for the purpose of any adjustment of premium under General Condition 5.6 of this Policy.

4. SECTION II - LIABILITY TO THIRD PARTY

- 4.1 The Company shall indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay for :

- 4.1.1 accidental death, bodily injury, illness or disease suffered by any person arising out of the performance of the Contract described in the Schedule;
- 4.1.2 accidental loss or damage to physical property arising out of the performance of the Contract described in the Schedule.
- 4.2 The liability of the Company under this section of the Policy for all compensation payable to any claimant or number of claimants in respect of or arising out of all occurrences of a series consequent on or attributable to one original cause shall not exceed the limit of indemnity specified in the Schedule.
- 4.3 In respect of any claim covered by this Section of the Policy the Company shall in addition be liable for :
 - 4.3.1 all costs and expenses of litigation recovered by any claimant against the Insured;
 - 4.3.2 all costs and expenses of litigation incurred by the Insured with the written consent of the Company in resisting any claim;
- 4.4 Where more than one party comprises "The Insured" each of the parties comprising the Insured shall for the purpose of this Policy be considered as a separate and distinct party and the words "The Insured" shall be considered as applying to each party in the same manner as if a separate Policy had been issued to each of the parties and the Company hereby agree to waive all rights of subrogation against each of the aforesaid parties arising out of any occurrence in respect of which any claim is made hereunder provided nevertheless that:
 - a) notwithstanding the foregoing, this Policy shall not respond in respect of claims arising out of death of or bodily injury (including illness) to any person who is, or could have been, insured under workmen's compensation insurance(s) and/or employer's liability insurance(s);
 - b) nothing in this Clause shall be deemed to increase the Limit of Indemnity in respect of anyone occurrence or series of occurrences as stated in the Schedule.
- 4.5 Provided always that the aggregate liability of the Company shall not be increased beyond the limit of indemnity specified in the Schedule.

EXCEPTIONS TO SECTION II

- 4.6 The Company shall not indemnify the Insured in respect of :
 - 4.6.1 liability for death, bodily injury, illness or disease arising out of or in the course of undertaking any activity in connection with an insured Contract in respect of:
 - a) any person employed directly or independently by the Employer or any contractor and/or sub-contractor of any tier and
 - b) any person to whom any part of the insured Contract has been sub-contracted including but not limited to self-employed person(s) and/or sole proprietor.
 - 4.6.2 liability in respect of compensation claimed from the Insured by an injured person or dependent under any Employees Compensation Legislation;
 - 4.6.3 liability resulting from or attributable to or caused by the ownership or possession or use by or on behalf of the Insured of any locomotive, waterborne vessel, aircraft or vehicle other than any land vehicle which is used solely on the contract Site and which is not used on any public road or public highway to which any Road Traffic Legislation applies;
 - 4.6.4 liability compulsorily insurable under any legislation governing the use of motor vehicles;
 - 4.6.5 liability in respect of loss or damage to any building, property or structure caused by or resulting from vibration or by the removal or weakening of support;
 - 4.6.6 liability in respect of loss of or damage to property belonging to or in the care, custody or control of the insured;

- 4.6.7 liability in respect of loss or damage to permanent or temporary works or materials forming part of the Contract or contracts insured under this Policy;
- 4.6.8 liability consequent upon any agreement by the Insured to pay any sum by way of indemnity or otherwise or predetermined penalties or liquidated damages imposed under any contract entered into by the Insured unless such liability would have attached also in the absence of such agreement, contractual penalty or liquidated damages;
- 4.6.9 actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity;
- 4.6.10 liability in respect of claims arising out of
- a) the rendering of or failure to render professional advice or service or any error or omission connected therewith or
 - b) any error in advice design formula or specification or
 - c) a breach of the duty owed in a professional capacity by the Insured.
- 4.7 This insurance does not cover any liability for:
- (1) Personal injury or bodily injury or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph (1) shall not apply to liability for personal injury or bodily injury or loss of or physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Period of Insurance.
 - (2) The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Period of Insurance.
 - (3) Fines, penalties, punitive or exemplary damages.

This Clause shall not extend this insurance to cover any liability which would not have been covered under this insurance had this Clause not been attached.

5. GENERAL CONDITIONS

- 5.1 This Policy shall be construed according to the laws of Hong Kong.
- 5.2 The Policy and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear.
- 5.3 All the terms, exceptions and conditions contained herein or endorsed hereon are incorporated in and form part of this contract of insurance and are deemed to be conditions precedent to any liability on the part of the Company so far as they relate to anything to be done by the Insured.
- 5.4 The expressions "Constructional Plant", "Certificate of Completion", "Contract", "Contractor", "Contract Sum", "Final Contract Sum", "Maintenance Period", "Site", "Specification" and "Works" shall bear the meaning ascribed to them in the Government of the Hong Kong Special Administrative Region General Conditions of Contract for Civil Engineering Works/Building Works.
- 5.5 If any change shall occur materially varying any of the facts upon which this Policy is based the Insured shall immediately give notice in writing to the Company and the premium shall be adjusted in accordance with any agreed rate.
- 5.6 The Insured shall within three months of the expiration of the Period of Insurance furnish to the Company a declaration of the Final Contract Sum and if such sum shall differ from the Contract Sum the premium shall be adjusted accordingly subject to any minimum retained premium previously agreed.
- 5.7 The Insured shall also take and cause to be taken all reasonable precautions to prevent loss damage or accident and shall

comply with the "Construction Sites (Safety) Regulations" and any ordinance or regulation which might apply in respect of the insured Contract.

- 5.8 In the event of any occurrence which might give rise to a claim under this Policy the Insured shall:
- 5.8.1 notify the Company as soon as possible and in writing give an indication as to the nature and extent of the damage;
 - 5.8.2 at the expense of the Company take such immediate action as is necessary to minimise the loss provided that such expense shall not increase the Company ultimate loss;
 - 5.8.3 keep parts affected and make them available for inspection by a representative or surveyor of the Company for a reasonable period of time but the Insured shall not in any case be entitled to abandon any property to the Company whether taken possession of by the Company or not;
 - 5.8.4 submit a formal claim and furnish all such information and documentary evidence as the Company may require within six months of the occurrence or such further time as the Company may in writing agree, such agreement not to be unreasonably withheld;
 - 5.8.5 inform and assist the police authorities in case of loss or damage due to theft or burglary or malicious action;
 - 5.8.6 immediately send to the Company upon receipt any writ summons or other proceedings which may be commenced against the Insured;
 - 5.8.7 give to the Company all information and assistance to enable the Company to settle or resist any claim or institute proceedings.
- 5.9 In the event of a claim or claims arising for which the Company could be liable under this Policy the Company shall be entitled :
- 5.9.1 to undertake in the name and on behalf of the Insured the absolute conduct and control of any proceedings and the settlement of the same;
 - 5.9.2 to take proceedings at their own expense and for their own benefit but in the name of the Insured to recover compensation or secure an indemnity from any third party in respect of anything covered by this Policy;
 - 5.9.3 to pay to the Insured in respect of any claim or claims the maximum liability of the Company under Section II of this Policy as stated in the Schedule or such lesser sum for which the said claim or claims can be settled (subject to deduction in either case of any sum or sums already paid on account for such claim or claims) and thereafter the Company shall be under no further liability in respect of said claim or claims except for payment of costs and expenses incurred prior to the date of such payment and for which the Company may be liable hereunder.
- 5.10 The Insured shall not negotiate, pay, settle, admit or repudiate any claim under the Policy without the written consent of the Company.
- 5.11 This insurance is not to be called upon in contribution and is only to pay any loss hereon if and so far as not recoverable under any other insurance.
- 5.12 All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder any such claim shall not within twelve months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.
- 5.13 Any unintentional or inadvertent error or omission, misrepresentation, misdescription or non- disclosure of any material facts in name or description or amount or reporting or notification in respect of this Policy by one of the Insured shall not operate to the prejudice of any of the other Insured's, providing the error or omission is corrected when discovered by the Insured.

5.14 Any person or entity who is not a party to this Policy shall have no rights under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) to enforce any terms of this Policy.