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## Contractors' "All Risks" Policy

1. **Now this Policy witnesseth** that in consideration of the Insured having paid or agreed to pay to the Company the premium stated in the said Schedule
- 1.1 **The Company hereby agrees** 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 will 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 alleges 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.

### 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
  - 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;
  - 3.2.4 such loss or damage be occasioned during the Maintenance Period / Defects Liability Period stated in the Schedule and
  - 3.2.5 was caused by an occurrence during the Construction Period stated in the Schedule or
  - 3.2.6 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 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 damage, 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.
  - 3.4.12 loss or damage that is not unforeseen or accidental in nature.

#### 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 of 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 of 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 of 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 the Policy.

#### 4. SECTION II- LIABILITY TO THIRD PARTIES

- 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 of 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 agrees 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 notwithstanding the foregoing, this Policy shall not respond in respect of claims:-
- 4.4.1 for loss of or damage to items insured or insurable under Section I of the Policy, even if not recoverable due to an excess or any limit;
- 4.4.2 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);
- 4.4.3 arising out of death of or bodily injury (including illness) suffered by:-
- i) any person employed by any insured party, i.e. Principal, Contractors, Sub-Contractors, Sub-sub-contractors for the purpose of execution of the Insured Contract or any parts thereof; or
- ii) any person to whom part or parts of the Insured Contract have been subcontracted including but not limited to Self-employed Sub-contractors or Sole Proprietors; or
- iii) any person employed by the Principal's nominated, specialised or other contractors, (including their sub-contractors, sub-sub-contractors) for the purpose of execution of any work within or in the vicinity of the site of construction of the Insured Contract.

Nothing herein shall be deemed to increase the total liability of the Company in respect of the insured parties arising out of any one occurrence 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 in respect of death, bodily injury, illness or disease suffered by
- 1) any person employed by any Insured party for the purpose of execution of Insured Contract or any parts thereof;
- 2) any person to whom part or parts of the Insured Contract have been sub-contracted including but not limited to self-employed Sub-contractors.
- 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 of 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.

#### 5. GENERAL CONDITIONS

- 5.1 This Policy shall be construed according to the laws of Hong Kong Special Administrative Region.
- 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", "Defects Liability Period", "Site", "Specification" and "Works" shall bear the meaning ascribed to them in the Government of Hong Kong Special Administrative Region General Conditions of Contract for Civil Engineering Works/Building Works (1999 Edition).
- 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's 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 6 months of the occurrence of 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 the 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 in writing 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 and 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.

## INSURED PROPERTY:

### Section I(a)

- Item 1. The permanent and temporary Works constructed, erected or in the course of construction or erection in performance of the Contract and all other property for which the Insured Contractor is responsible under the Contract whilst on the Site and subject to its value being included in the Sum Insured however excluding Constructional Plant and temporary buildings.
- Item 2. Professional fees: costs and expenses in respect of architects', surveyors' and consulting engineers' fees necessarily incurred in the reinstatement of the Insured Property consequent upon its loss or damage but not for preparing any claim it being understood that the amount payable hereunder shall not exceed the scale charges of the appropriate professional body.
- Item 3. Removal of debris: costs and expenses necessarily incurred by the Insured with the consent of the Company in dismantling and removing debris of the portion or portions of the property insured under Item 1 destroyed or damaged by any peril hereby insured against.

### Section I (b)

- Item 4. Constructional Plant and temporary buildings described in the list attached to this Policy.

## HONG KONG JURISDICTION CLAUSE

The Indemnity provided by this Policy shall not apply in respect of judgements which are not in first instance delivered by or obtained from a Court of competent jurisdiction within Hong Kong nor to orders obtained in the said Court for the enforcement of judgements made outside Hong Kong whether by way of reciprocal agreements or otherwise.

## ENDORSEMENTS

(Where any of the following endorsements are expressly mentioned in the Policy Schedule or Specification, they shall be attaching to and forming part of this Policy.)

### A1. EXTENSION OF COVER FOR VIBRATION OR REMOVAL OR WEAKENING OF SUPPORT

- A.1.1 It is agreed and understood that notwithstanding Exception 4.6.5 and otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon and subject to the Insured having paid the agreed extra premium, Section II of this Insurance shall be extended to indemnify the Insured for:
- A1.1.1 liability in respect of the collapse of any building, property or structure or any part thereof or any damage which impairs the structural stability of any building, property or structure or which endangers its users caused by or resulting from vibration or removal or weakening of support;
- A1.1.2 provided that prior to the occurrence of such collapse or damage the condition of such building, property or structure was sound and all reasonable safety precautions had been taken;
- A1.1.3 provided that upon discovery of damage which does not immediately result in the collapse of any building, property or structure or any part thereof or any damage which impairs the structural stability of any building, property or structure or which endangers its users which is caused by or alleged to be caused by or resulting from vibration or removal or weakening of support arising out of any operations in connection with the execution of the insured Contract the Insured shall immediately suspend such operations or shall at their own expense take all reasonable precautions;
- A1.1.4 provided that the Company shall not indemnify the Insured in respect of damage caused by or resulting from vibration or removal or weakening of support to any building, property or structure under demolition or declared by the relevant public authority to be unsafe.
- A1.2 In respect of each and every occurrence of damage indemnifiable under this endorsement the Company shall not be liable for the first as per Schedule of adjusted loss whichever is the greater.
- A1.3 The liability of the Company in respect of damage caused by vibration or removal or weakening of support shall during the Period of Insurance not exceed as per Schedule in aggregate.

### A3. EXTENSION OF COVER FOR DESIGNER'S RISK

- A3.1 It is agreed and understood that notwithstanding Exception 3.4.1 and otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon and subject to the Insured having paid the agreed extra premium, Section I of this Insurance shall be extended to indemnify the Insured for:
- A3.1.1 loss or damage as a result of an accident due to any fault, defect, error or omission in or failure of any design plan or specification of the permanent works but shall always exclude that part of the Insured Property directly affected by such fault, defect, error or omission in or failure of any design plan or specification.
- A3.2 In respect of each and every occurrence of loss or damage indemnifiable under this endorsement the Company shall not be liable for the first as per Schedule.

#### **A4. EXTENSION OF COVER FOR INLAND TRANSIT**

A4.1 It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon and subject to the Insured having paid the agreed extra premium, Section I of this insurance shall be extended to cover:

A4.1.1 loss of or damage to Insured Property occurring during transit elsewhere within the territorial limits of Hong Kong subject to a limit of as per Schedule for any one loss.

A4.2 In respect of each and every occurrence of loss or damage indemnifiable under this endorsement the Company shall not be liable for the first as per Schedule

#### **A5. EXTENSION OF COVER FOR STORAGE**

A5.1 It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon and subject to the Insured having paid the agreed extra premium, Section I of this insurance shall be extended to cover:

A5.1.1 loss of or damage to Insured Property occurring whilst in storage elsewhere within the territorial limits of Hong Kong subject to a limit of as per Schedule for any one loss.

A5.2 In respect of each and every occurrence of loss or damage indemnifiable under this endorsement the Company shall not be liable for the first as per Schedule.

#### **A6. EXTENSION OF COVER FOR THE COSTS OF EXTRA CHARGES FOR OVERTIME NIGHT WORK WORK ON PUBLIC HOLIDAYS AND EXPRESS FREIGHT ARISING FROM A CLAIM**

A6.1 It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon and subject to the Insured having paid the agreed extra premium, Section I of this insurance shall be extended to cover:

A6.1.1 extra charges for overtime, night work, work on public holidays and express freight (excluding air freight) arising from a claim indemnifiable under this Policy but limited to 10% of the amount of the adjusted claim.

A6.1.2 subject to such extra charges being incurred solely and directly for the repair or replacement of Insured Property lost or damaged by an insured peril.

#### **A7. EXTENSION OF COVER FOR EMPLOYER'S PROPERTY**

A7.1 It is agreed and understood that notwithstanding Exception 4.6.6 and otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon and subject to the Insured having paid the agreed extra premium, Section II of this insurance shall be extended to indemnify the Insured for:

A7.1.1 liability in respect of loss of or damage to any building, structure or property belonging to the Employer in the care, custody or control of an insured Contractor in connection with the execution of the insured Contract;

A7.1.1.1 more particularly – as per Schedule

A7.2 In respect of each and every occurrence of loss or damage indemnifiable under this endorsement the Company shall not be liable for the first as per Schedule whichever is the greater.

A7.3 The liability of the Company in respect of loss of or damage to the Employer's property held in care, custody or control shall during the period of insurance not exceed as per Schedule in aggregate.

#### **B1. SAFETY PRECAUTIONS**

B1.1 Further to General Condition 5.7 the Insured shall:

B1.1.1 take into account the prevailing weather conditions in Hong Kong;

B1.1.2 construct storage facilities for cement and other materials as water tight structures in areas not exposed to flooding and shall store cement at least 0.6 metres above ground level. The Company shall not indemnify the Insured in respect of loss of or damage to cement due to rain, flood or other forms of ingress of water unless the cement storage structures also suffer damage by a cause indemnifiable under the Policy;

B1.1.3 take all reasonable measures to secure the Site against unauthorised entry and shall have watchmen on guard 24 hours a day 7 days a week;

B1.1.4 take all reasonable precautions against fire hazards and provide and maintain fire fighting equipment.

#### **B2. SPECIAL CONDITIONS FOR UNDERGROUND SERVICES**

B2.1 The Company shall not indemnify the Insured in respect of liability as a result of loss of or damage to existing underground services (such as water, gas and sewage pipes, electric and telephone cables) unless:

B2.1.1 prior to the commencement of excavation the Insured has inquired with the relevant authorities about the exact position of such services and

B2.1.2 In the event of the relevant authorities indicating the presence of such services in the vicinity of the Site the Insured shall proceed to locate such services by the hand-digging of trial pits prior to any mechanical excavation and

B2.1.3 if such services cannot be located by hand-digging the Insured shall approach each relevant authority and seek their assistance in locating its services.

B2.2 The liability of Company shall be restricted to the cost of repair or replacement or reinstatement of such damaged services and shall not extend to cover any consequential loss resulting from the interruption of the service.

B2.3 In respect of each and every occurrence of loss or damage indemnifiable under this clause the Company shall not be liable for the first as per Schedule whichever is the greater.

#### **B5. SPECIAL EXCESS CLAUSES**

The following clauses are supplementary and may be applied individually:

B5.1 In respect of each and every occurrence of loss or damage indemnifiable under Section I the Company shall not be liable for the first as per Schedule of such loss of or damage to the Works caused by theft, burglary or robbery.

B5.2 In respect of each and every occurrence of loss or damage indemnifiable under Section I the Company shall not be liable for the first as per Schedule (whichever is the greater) of such loss or damage to hydroseeding.



### **BURNING & WELDING CLAUSE**

It is a condition precedent to liability under this Policy that in respect of work involving the application of heat, the following precautions are in operation.

1. General
  - a) The area in which the operation is to be carried out must be clear and free from combustible materials before operations commence.
  - b) Before carrying out any work on one side of a wall or partition an inspection must be made on the opposite side to the work to ensure that no combustible materials are in danger of ignition either directly or by condition of heat.
  - c) Except for plumbing or painting contracts involving one man only, at least one responsible officer must be present at commencement of the operation and two or more employees must be present during the whole period of the operation.
  - d) A thorough examination must be made in the vicinity after termination of each period of works.
  - e) Portable fire extinguishing appliances must be kept available for immediate use.
2. Oxy-acetylene and other Welding and Cutting Equipment
  - a) The area in which the work is to be carried out must be shielded adequately by the use of fire-resistant material.
  - b) Combustible floors in the area must be covered with sand or protected with overlapping sheets of non-combustible material.
3. Blow Lamps and Blow Torches
  - a) Blow lamps must be filled only in the open.
  - b) Blow lamps must be lighted immediately before work commences and extinguished immediately after work ceases.
  - c) Lighted blow lamps must not be left unattended.

### **CLAIM CONTROL CLAUSE**

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that the Insured hereby undertakes to advise the Company of incidents which may give rise to a claim hereunder regardless of the amount to be claimed in respect of third party bodily injury as soon as they themselves are made aware of it, and in such event will co-operate with the Company in the defence or settlement of such claim and in no case shall the Insured make any admission of liability under the Policy without the consent in writing of the Company.

### **POLLUTION EXCLUSION CLAUSE**

It is hereby understood and agreed that the Company will not be liable under this Policy in respect of Bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, release, seepage or escape of pollutants, or any loss, cost or expense arising out of any direction or request, whether governmental or otherwise, that the Insured evaluate, test for monitor, clean up, remove, control, contain, treat, detoxify or neutralize pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. The term "waste" as used in this definition includes materials which are to be or are being recycled, reconditioned or reclaimed.

### **TOTAL ASBESTOS EXCLUSION CLAUSE**

It is hereby understood and agreed that this Policy shall not apply to and does not cover any 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 asbestos in whatever form or quantity.

### **PRODUCTS LIABILITY EXCLUSION CLAUSE**

The Indemnity expressed in this Policy shall not apply to liability in respect of death or bodily injury including illness of any person or loss of or damages to any person caused by or in connection with or arising from property goods products food or drink or the containers thereof sold or supplied or constructed or property or goods which have been repaired altered renovated serviced or installed and no longer in the Insured's possession or control, or poisoning or contamination of any kind.

### **PROFESSIONAL LIABILITY EXCLUSION CLAUSE**

The Indemnity expressed in this Policy shall not apply to liability in respect of death or bodily injury including illness of any person or loss of or damage to property caused by or in connection with or arising from error or omission in design specification or advice remedial or other treatment given administered or prepared by the Insured or by any person acting on behalf of the Insured holding a Professional qualification of Professional Skill associated with such qualification.

## ELECTROMAGNETIC RADIATION EXCLUSION

It is hereby understood and agreed that this Policy shall not be liable for any liability arising out of or allegedly due to exposure to or contact with Electromagnetic Radiation. Electromagnetic Radiation shall mean magnetic energy, waves, fields or forces generated, produced, distributed, transmitted or maintained by charges, currents, frequencies, energy or forces of electricity.

## CYBER EXCLUSION

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is hereby noted and agreed that this Policy does not apply to and specifically excludes losses of any kind directly or indirectly caused by, arising from, or consisting of, in whole or in part:

- (a) the use or misuse of the Internet or similar facility;
- (b) any electronic transmission of data or other information;
- (c) any computer virus or similar problem;
- (d) the use or misuse of any Internet address, Web site or similar facility;
- (e) any data or other information posted on a Web site or similar facility;
- (f) any loss of data or damage to any computer system, including but not limited to hardware or software (unless such loss or damage is caused by an earthquake, a fire, a flood, or a storm);
- (g) the functioning or malfunctioning of the Internet or similar facility, or of any Internet address, Web site or similar facility (unless such malfunctioning is caused by an earthquake, a fire, a flood, a storm); or
- (h) any infringement, whether intentional or unintentional, of intellectual property rights (including but not limited to trademark, copyright or patent).

It is further agreed that accidental damage to property covered under this Policy shall mean physical damage to the substance of property.

Physical damage to the substance of property shall not include damage to data or software, in particular any detrimental change in data, software or computer programs that is caused by a deletion, a corruption or a deformation of the original structure.

Consequently the following are excluded from this Policy:

- (a) loss of or damage to data or software, in particular any detrimental change in data, software or computer programs that is caused by a deletion, a corruption or a deformation of the original structure, and any business interruption losses resulting from such loss or damage.
- (b) loss or damage resulting from an impairment in the function, availability, range of use or accessibility of data, software or computer programs, and any business interruption losses resulting from such loss or damage.

## WAR AND TERRORISM EXCLUSION ENDORSEMENT

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

- (1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power; martial law, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or public or local authority; or
- (2) any act of terrorism.

It is also agreed that, regardless of any contributory causes, this Policy does not cover any loss, damage, liability, cost or expense directly or indirectly arising out of

- (a) biological or chemical contamination; and/or
- (b) missiles, bombs, grenades, explosives

due to any act of terrorism.

For the purpose of this Endorsement:

- (1) 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, ethnic, or similar purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear;
- (2) "contamination" means the contamination, poisoning, or prevention and/or limitation of the use of objects due to the effects of chemical and/or biological substances.

This Endorsement also excludes loss, damage, liability, 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 alleges that by reason of this Exclusion, any loss, damage, liability, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

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

Subject otherwise to the terms, exceptions and conditions of this Policy.



#### DATE RELATED PERFORMANCE AND FUNCTIONALITY CLAUSE (A)

- (1) The Company shall not be liable this Policy in respect of (i) any loss destruction or damage to property, (ii) consequential loss additional expenditure extra expenses or lost profit, (iii) legal liability, or (iv) other fees costs expenses disbursements awards of whatsoever nature, whether occurring before during or after the year 2000, directly or indirectly caused by contributed to by consisting of or arising in whole or in part from the failure of any **Data Processing System**, whether the property of the Insured or not:
  - (a) to correctly recognise any date as its **True Calendar Date**; or
  - (b) to capture save or retain and/or to correctly manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its True Calendar Date; or
  - (c) to capture save retain or to correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture save retain or correctly to process such data on or after any date.
- (2) The exclusion of the Company's liability under paragraph (1) of this Memorandum however shall not apply to any claim for subsequent loss destruction or damage to any property or consequential loss which itself results from a **Defined Peril** but only to the extent that such claim would otherwise be insured under this Policy.
- (3) For the purpose of this Memorandum:
  - (a) "**Data Processing System**" shall mean any equipment installation system device and medium and/or any peripheral devices attached thereto (including microchips integrated circuits and other components and parts forming part thereof) for processing manipulating storing or retrieving data electronically and the expression "Data Processing System" also includes any hardware-and-software codes commands and instruction programmed into or encoded in any part of or used in connection with the Data Processing System.
  - (b) "**True Calendar Date**" shall mean the then-current calendar date or any other calendar date intended by the user of the Data Processing System, irrespective of how such date may be interpreted or processed by the Data Processing System.
  - (c) "**Defined Perils**" shall mean fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons, theft or attempted theft, earthquake, subterranean fire, storm, tempest, flood, escape of water from any tank apparatus or pipe, impact by any vehicle or by goods falling therefrom or animal.
- (4) Where this Memorandum is at variance with or inconsistent with any terms provisions or conditions of the Policy, this Memorandum shall take precedence and shall prevail.

#### DATE RELATED PERFORMANCE AND FUNCTIONALITY CLAUSE (B)

- (1) The Company shall not be liable under this Policy in respect of (i) any loss destruction or damage to property, (ii) consequential loss additional expenditure extra expenses or lost profit, (iii) legal liability, or (iv) other fees costs expenses disbursements awards of whatsoever nature, whether occurring before during or after the year 2000, directly or indirectly caused by contributed to by consisting of or arising in whole or in part from the failure of any **Data Processing System**, whether the property of the Insured or not:
  - (a) to correctly recognise any date as its **True Calendar Date**; or
  - (b) to capture save or retain and/or to correctly manipulate interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its True Calendar Date; or
  - (c) to capture save retain or to correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture save retain or correctly to process such data on or after any date.
- (2) For the purpose of this Memorandum:
  - (a) "**Data Processing System**" shall mean any equipment installation system device and medium and/or any peripheral devices attached thereto (including microchips integrated circuits and other components and parts forming part thereof) for processing manipulating storing or retrieving data electronically and the expression "Data Processing System" also includes any hardware-and-software codes commands and instructions programmed into or encoded in any part of or used in connection with the Data Processing System.
  - (b) "**True Calendar Date**" shall mean the then-current calendar date or any other calendar date intended by the user of the Data Processing System, irrespective of how such date may be interpreted or processed by the Data Processing System.
- (3) Where this Memorandum is at variance with or inconsistent with any terms provisions or conditions of the Policy, this Memorandum shall take precedence and shall prevail.