

Liability Conditions

Throughout this Form the word "Insured" refers to the Named Insured shown in the Declarations. The word "Insurer" refers to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS of Liability Insurance form attached to this policy.

If this policy is subject to the Civil Code of Quebec, reference to Quebec Civil Code (CcQ) articles is for easier reading only and should not be construed as exact quotations.

If any portion of these conditions are found to be invalid, unenforceable or contrary to statute, the remainder shall remain in full force and effect.

SECTION I: LIABILITY CONDITIONS – ALL PROVINCES

1. Bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve the Insurer of the Insurer's obligation under this policy.

2. Canadian Currency Clause

All limits of insurance, premiums and other amounts are in Canadian currency.

3. Changes (CcQ 2405)

This policy contains all the agreements between the Named Insured and the Insurer concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with the Insurer's consent. This policy's terms can be amended or waived only by endorsement issued by the Insurer and made a part of this policy.

4. Duties In the Event of Occurrence, Offence, Claim or Action (CcQ 2504, 2470 and CcQ 2471)

a. The Named Insured must see to it that the Insurer is notified as soon as practicable of an "occurrence" or an offence which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offence took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offence.

b. If a claim is made or "action" is brought against any Insured, the Named Insured must:

- (1) Immediately record the specifics of the claim or "action" and the date received; and
- (2) Notify the Insurer as soon as practicable.

The Named Insured must see to it that the Insurer receives written notice of the claim or "action" as soon as practicable.

c. The Named Insured and any other involved Insured must:

- (1) Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the claim or "action";
- (2) Authorize the Insurer to obtain records and other information;
- (3) Cooperate with the Insurer in the investigation or settlement of the claim or defence against the "action"; and
- (4) Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may also apply.

d. No Insured will, except at that Insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without the Insurer's consent.

5. Examination of the Named Insured's Books and Records

The Insurer may examine and audit the Named Insured's books and records as they relate to this policy at any time during the policy period and up to three years afterward.

6. Inspections and Surveys

a. The Insurer has the right to:

- (1) Make inspections and surveys at any time;
- (2) Give the Named Insured reports on the conditions the Insurer finds; and
- (3) Recommend changes.

- b. The Insurer is not obligated to make any inspections, surveys, reports or recommendations and any such actions the Insurer does undertake relate only to insurability and the premiums to be charged. The Insurer does not make safety inspections. The Insurer does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And the Insurer does not warrant that conditions:
 - (1) Are safe or healthful; or
 - (2) Comply with laws, regulations, codes or standards.
- c. Paragraphs **a.** and **b.** of this condition apply not only to the Insurer, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
- d. Paragraph **b.** of this condition does not apply to any inspections, surveys, reports or recommendations the Insurer may make relative to certification, under provincial or municipal statutes, ordinances, bylaws or regulations, of boilers, pressure vessels or elevators.

7. Legal Action Against the Insurer

No person or organization has a right under this policy:

- a. To join the Insurer as a party or otherwise bring the Insurer into an "action" asking for "compensatory damages" from an Insured; or
- b. To sue the Insurer on this policy unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgment against an Insured; but the Insurer will not be liable for "compensatory damages" that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by the Insurer, the Insured and the claimant or the claimant's legal representative.

Every action or proceeding against an Insurer for the recovery of insurance money payable under contract is absolutely barred unless commenced within the time set out in the Insurance Act or other applicable legislation.

8. Other Insurance (CcQ 2496)

If other valid and collectible insurance is available to the Insured for a loss the Insurer covers by this policy, the Insurer's obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, the Insurer's obligations are not affected unless any of the other insurance is also primary. Then, the Insurer will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "the Named Insured's work";
 - (b) That is Fire insurance for premises rented to the Named Insured or temporarily occupied by the Named Insured with permission of the owner;
 - (c) If the loss arises out of the maintenance or use of watercraft or "automobile" not otherwise excluded under this policy.
- (2) Any other primary insurance available to the Named Insured covering liability for "compensatory damages" arising out of the premises or operations or products-completed operations for which the Named Insured has been added as an additional insured by attachment of an endorsement.
- (3) **Excess Insurance (Claims Made Form)**

If this Policy provides claims-made coverage, this insurance is excess over any of the other insurance (whether primary, excess, contingent or on any other basis) that is effective prior to the beginning of the policy period shown in the Declarations of this insurance and applies to "bodily injury", "property damage", "personal injury" or "advertising injury" on other than a claims-made basis.

When this insurance is excess, the Insurer will have no duty to defend the Insured against any "action" if any other insurer has a duty to defend the Insured against that "action". If no other insurer defends, the Insurer will undertake to do so, but the Insurer will be entitled to the Insured's rights against all those other insurers.

When this insurance is excess over other insurance, the Insurer will pay only the Insured's share of the amount of the loss, if any, that exceeds the sum of:

- i. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- ii. The total of all deductible and self-insured amounts under all that other insurance.

The Insurer will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this policy.

c. Method of Sharing

If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

9. Premium Audit

- a. The Insurer will compute all premiums for this policy in accordance with the Insurer's rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period the Insurer will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, the Insurer will return the excess to the first Named Insured subject to the retention of the minimum retained premium shown in the Declarations of this policy.
- c. The first Named Insured must keep records of the information the Insurer needs for premium computation, and send the Insurer copies at such times as the Insurer may request.

10. Premiums

The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums the Insurer pays.

11. Representations (CcQ 2496)

By accepting this policy, the Named Insured agrees:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations the Named Insured made to the Insurer; and
- c. The Insurer has issued this policy in reliance upon the Named Insured's representations.

12. Separation of Insureds, Cross Liability

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom claim is made or "action" is brought.

13. Transfer of Rights of Recovery Against Others to the Insurer (CcQ 2474)

If the Insured has rights to recover all or part of any payment the Insurer has made under this policy, those rights are transferred to the Insurer. The Insured must do nothing after loss to impair them. At the Insurer's request, the Insured will bring "action" or transfer those rights to the Insurer and help the Insurer enforce them.

14. Transfer of the Named Insured's Rights and Duties Under This Policy (CcQ 2475 and 2476)

The Named Insured's rights and duties under this policy may not be transferred without the Insurer's written consent except in the case of death of an individual Named Insured.

If the Named Insured dies, the Named Insured's rights and duties will be transferred to the Named Insured's legal representative but only while acting within the scope of duties as the Named Insured's legal representative. Until the Named Insured's legal representative is appointed, anyone having proper temporary custody of the Named Insured's property will have the Named Insured's rights and duties but only with respect to that property.

15. Provisional Premium

If the premium shown in this policy is a provisional premium, the Insurer will, at the end of each audit period, compute the earned premium for that period. Audit premiums are due and payable on notice to the Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, the Insurer will return the excess to the Named Insured subject to the retention of the minimum premium shown in the Declarations of this policy.

SECTION II: LIABILITY CONDITIONS – ALL PROVINCES EXCLUDING ALBERTA, BRITISH COLUMBIA, MANITOBA AND QUEBEC

Termination

- a. The first Named Insured shown in the Declarations may terminate this policy by mailing or delivering to the Insurer advance written notice of termination.
- b. The Insurer may terminate this policy by mailing or delivering to the first Named Insured written notice of termination at least:
 - (1) 5 days before the effective date of termination if personally delivered;
 - (2) 15 days before the effective date of termination if the Insurer terminates for non-payment of premium; or
 - (3) 30 days before the effective date of termination if the Insurer terminates for any other reason.
- c. The Insurer will mail or deliver the notice to the first Named Insured's last mailing address known to the Insurer.
- d. The policy period will end on the date termination takes effect.

- e. If this policy is terminated, the Insurer will send the first Named Insured any premium refund due. If the Insurer terminates, the refund will be pro rata. If the first Named Insured terminates, the refund may be less than pro rata. The termination will be effective even if the Insurer has not made or offered a refund. If the premium is provisional, a premium audit will take place as per **SECTION I, Paragraph 15 – Provisional Premium.**

SECTION III: LIABILITY CONDITIONS – PROVINCE of QUEBEC

1. Material Change in Risk (Articles 2466 and 2467)

The Named Insured shall promptly notify the Insurer of any change that increases the risks stipulated in the policy and that results from events within his control if it is likely to materially influence an insurer in setting the rate of the premium, appraising the risk or deciding to continue to insure it.

On being notified of any material change in the risk, the Insurer may cancel the contract or propose, in writing, a new rate of premium. Unless the new premium is accepted and paid by the Insured within thirty (30) days of the proposal, the policy ceases to be in force.

2. Misrepresentation or Concealment (Articles 2410, 2411 and 2466)

Any misrepresentation or concealment of relevant facts mentioned in **SECTION I Paragraph 11. Representations** and **SECTION III - Paragraph 1. Material Change in Risk** by the Applicant or the Insured nullifies the contract at the instance of the Insurer, even in respect to losses not connected with the risk so misrepresented or concealed.

Unless the bad faith of the Applicant or of the Insured is established or unless it is established that the Insurer would not have covered the risk if he had known the true facts, the Insurer remains liable towards the Insured for such proportion of the indemnity as the premium he collected bears to the premium he should have collected.

3. Warranties (Article 2412)

Any increase in risk resulting from a breach of warranty suspends the coverage until accepted by the Insurer or until such breach has been remedied by the Named Insured.

4. Intentional Fault (Article 2464)

The Insurer is never liable to compensate for injury resulting from the Insured's intentional fault.

Where there is more than one Insured, the obligation of coverage remains in respect to those Insureds who have not committed an intentional fault.

Where the Insurer is liable for injury caused by a person for whose acts the Insured is liable, the obligation of coverage subsists regardless of the nature or gravity of that person's fault.

5. Right of Action (Article 2502)

The Insurer may set up against the injured third person any grounds he could have invoked against the Named Insured at the time of loss, but not grounds pertaining to facts that occurred after the loss; the Insurer has a right against the Named Insured in respect of facts that occurred after the loss.

6. CANCELLATION (Articles 2477 and 2479)

This policy may be cancelled at any time:

- a. By any of the Named Insureds giving written notice. Termination takes effect upon receipt of the notice and the Insured shall be entitled to a refund of the excess of the premium actually paid over the short-term for the expired time. If the premium is provisional, a premium audit will take place as per **SECTION I, Paragraph 15 – Provisional Premium.**

- b. By the Insurer giving written notice to each Named Insureds at their last known address, at least:

- (1) fifteen (15) days before the effective date of cancellation by reason of non payment of premium, or
- (2) thirty (30) days before the effective date of cancellation by any other reason.

Cancellation takes effect fifteen (15) or thirty (30) days after receipt of such notice, depending upon the reason for cancellation. The Named Insured is entitled to refund of the excess premium actually paid over the prorated premium for the expired time. If the premium is provisional, a premium audit will take place as per **SECTION I, Paragraph 15 – Provisional Premium.**

- c. Where one or more of the Named Insureds have been mandated to receive or send the notices provided for under Paragraph **a.** or **b.** above, notices sent or received by them shall be deemed to have been sent or received by all Named Insureds.

- d. In this Condition, the words "premium actually paid" means the premium actually paid by the Named Insured to the Insurer or its representative, but do not include any premium or part thereof paid to the Insurer by a representative unless actually paid to the representative by the Insured.

7. NOTICE

Any notice to the Insurer may be sent by any recognized means of communications to the Insurer or its authorized representative. Notice may be given to the Named Insured by letter personally delivered to him or by mail addressed to him at his last known address.

It is incumbent upon the sender to prove that such notice was received.