

# BUILDER'S RISK BROAD FORM

**WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN CLAUSE 17.**

## **1. INDEMNITY AGREEMENT**

In the event that any of the property insured be lost, destroyed or damaged by insured perils, the Insurer will indemnify the Insured against the direct loss so caused to an amount not exceeding whichever is the least of:

- (a) the "replacement cost" value of the property at the time of loss or damage but in no event to exceed the amount necessarily expended for "replacement";
- (b) the interest of the Insured in the property;
- (c) the amount of insurance specified on the "Declaration Page(s)" in respect of property lost or damaged.

Provided, however, that where the insurance applies to the property of more than one person or interest, the Insurer's total liability for loss sustained by all such persons and interests shall be limited in the aggregate to the amount or amounts of insurance specified on the "Declaration Page(s)".

## **2. ADDITIONAL INSUREDS**

All contractors and/or all subcontractors are added as Additional Insureds. The following are not Additional Insureds:

- (a) Suppliers who perform no construction or installation of work at the "project site";
- (b) Consulting engineers; or
- (c) Consulting architects.

## **3. INSURED PROPERTY**

This Form, except as provided in this Form, insures the following property at the "project site" for the amount of insurance specified in the "Declaration Page(s)" for the "Project Site"

- (a) property in course of construction, installation, reconstruction or repair other than property described in 3.(c)
  - (i) owned by the Insured;
  - (ii) owned by others, provided the value of such property is included in the amount of insurance;  
all to enter into and form part of the completed project including expendable materials and supplies, not otherwise excluded, necessary to complete the project;
- (b) landscaping, growing trees, plants, shrubs or flowers all to enter into and form part of the project provided that the value of such property is included in the amount of insurance;
- (c) temporary buildings, scaffolding, falsework, forms, hoardings, excavation, site preparation, landscaping and similar work including but not limited to power supply, equipment, water supply systems, sanitary and first aid equipment, fire protection equipment, job site field offices and other property of a similar nature which is not incorporated into the project but which is necessary to complete the construction operations, provided that the value of this property is included in the amount insured and then only to the extent that replacement or restoration is made necessary to complete the project;
- (d) expenses incurred in the removal from the "project site" of debris of the property insured, occasioned by loss, destruction or damage to such property and in respect of which insurance is provided by this Form.

## **4. DEDUCTIBLE**

The Insurer is liable for the amount by which the loss or damage caused by any of the insured perils exceeds the amount of the deductible specified on the "Declaration Page(s)" in any one "occurrence".

Should one "occurrence" give rise to the application of more than one deductible, only the largest individual deductible amount shall apply.

## **5. INSURED PERILS**

This form, except as provided otherwise in this Form, insures against all risks of direct physical loss of or damage to property insured.

## **6. EXCLUDED PROPERTY**

This Form does not insure loss of or damage to,

- (a) money, books of account, securities for money, evidences of debt or title;
- (b) automobiles, tractors, and other motor vehicles, aircraft or watercraft, but this exclusion shall not apply to unlicensed automobiles or unlicensed trailers when used on the "project site" in the business of the Insured;
- (c) property illegally acquired, kept, stored or transported; property subject to forfeiture, seized or confiscated for breach of any law or by order of any public authority;
- (d)
  - i. property while waterborne, from the commencement of loading until completion of discharge except on a ferry, railway car or transfer barge, all in connection with land transportation;
  - ii. insured under a Marine policy;
  - iii. aboard or being transported by any aircraft;
- (e) contractors' tools and equipment, including spare parts and accessories whether owned, loaned, hired or leased other than property specified in INSURED PROPERTY Item 3.(c).

## **7. EXCLUDED PERILS**

### **A. This Form Does Not Insure:**

- (a) the cost of making good
    - i. faulty or improper material;
    - ii. faulty or improper workmanship;
    - iii. faulty or improper design;
- provided, however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured;

- (b) penalties or liquidated damages for non-completion of or delay in completion of contract or non-compliance with contract conditions or costs incurred solely in an effort to eliminate or reduce penalties or liquidated damages for which the Insured may be contractually liable;
- (c) wear and tear, gradual deterioration, latent defect or inherent vice, or any quality in property that causes it to damage or destroy itself, provided, however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured;
- (d) mysterious disappearance or shortage of insured property disclosed when taking inventory;

**B. This Form does not insure against loss or damage caused directly or indirectly:**

- (a) by earthquake. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to loss or damage, except for loss or damage caused directly by:
  - i. resultant fire;
  - ii. explosion;
  - iii. smoke; or
  - iv. "leakage from 'fire protective equipment'",
 provided such perils are not otherwise excluded in this Form.  
 This exclusion does not apply to property in transit if a limit is provided for in EXTENSION OF COVERAGE 8.(c)(i).
- (b) by flood, meaning waves, tides, tidal waves, tsunamis, and the rising of, the breaking out or the overflowing of, any body of water, whether natural or man made. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to loss or damage, except for loss or damage caused directly by:
  - i. resultant fire;
  - ii. explosion;
  - iii. smoke; or
  - iv. "leakage from 'fire protective equipment'",
 provided such perils are not otherwise excluded in this Form.  
 This exclusion does not apply to property in transit if a limit is provided for in EXTENSION OF COVERAGE 8.(c)(i) or to loss or damage caused directly by leakage from a water main.
- (c) by mechanical or electrical breakdown or derangement provided however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property shall be insured;
- (d) by rust or corrosion, frost or freezing, pollution or contamination unless caused directly by a peril not otherwise excluded in this Form.
- (e) by delay, loss of market or loss of use or occupancy;
- (f) by misappropriation, secretion, conversion, infidelity or any dishonest manner of acquiring possession on the part of the Insured or any other party of interest, employees or agents of the Insured, or any person to whom the property may be entrusted (bailees for hire excepted);
- (g) proximately or remotely, arising in consequence of or contributed to by the enforcement of any by-law, regulation, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, which by-law, regulation, ordinance or law makes it impossible to repair or reinstate the property as it was immediately prior to the loss;
- (h) by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage;
- (i)
  - (i) by any nuclear incident as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any law amendatory thereof or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
  - (ii) by contamination by radioactive material.

**C. Pollution Excluded**

This Form does not insure against:

- (i) loss or damage caused directly or indirectly by any actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants", nor the cost or expense of any resulting "clean-up", but this exclusion does not apply:
  - (1) if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is the direct result of a peril not otherwise excluded under this Form;
  - (2) to loss or damage caused directly by a peril not otherwise excluded under this Form;
- (ii) cost or expense for any testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

**8. EXTENSIONS OF COVERAGE**

Each of the limits of insurance specified for the following extensions of coverage, does not increase the limit of insurance under this Form unless specified otherwise in the extension. In the event that coverage provided under any extension is more specifically and separately insured elsewhere in this Policy, then the relevant extension under this Section 8 shall not apply.

**(a) Removal:**

If any of the insured property is necessarily removed from the "project site" to prevent loss or damage or further loss or damage to the insured property, that part of the insurance under this Form that exceeds the amount of the Insurer's liability for any loss already incurred shall, for seven (7) days only, or for the unexpired term of the policy if less than seven (7) days, insure the property removed and any property remaining at the "project site" in the proportions which the value of the property in each of the respective locations bears to the value of the property in them all.

**(b) Debris Removal:**

- (i) Debris Removal  
The Insurer will indemnify the Insured for expenses incurred in the removal from the "project site" of debris of the insured property, occasioned by loss or damage to such property for which loss or damage insurance is afforded under this Form.
- (ii) Removal of Windstorm Debris  
The Insurer will indemnify the Insured for expenses incurred in the removal of debris or other property which is not insured by this Form but which has been blown by windstorm upon the "project site".

Extensions of Coverage 8.(b)(i) and 8.(b)(ii) do not apply to costs or expenses:

- a. to "clean up" "pollutants" from land or water; or
- b. for testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

**(c) Offsite Coverage**

This Form insures the property described in INSURED PROPERTY Section 3:

- (i) in transit, from the commencement of loading at the original point of shipment anywhere in Canada or the continental United States of America (excluding Alaska) until the completion of unloading at the site of construction for the amount of insurance specified on the "Declaration Page(s)" for In Transit; and
- (ii) at any location in Canada and continental United States of America (excluding Alaska) other than in transit or while being manufactured or undergoing any process, for the amount of insurance specified on the "Declaration Page(s)" for Any Other Location.

#### 9. CESSATION OF COVERAGE

This Form ceases to insure the project:

- (a) on the commencement of use or occupancy of any part or section of the project unless such use or occupancy is for:
    - (i) construction purposes
    - (ii) office or habitational, banking or parking purposes or a convenience store less than 465 square metres (5000 square feet) in area; or
    - (iii) installing, testing and commissioning or storing of equipment or machinery;
  - (b) when left unattended for more than 30 consecutive days or when construction activity has ceased for more than 30 consecutive days;
  - (c) the expiration of this insurance;
- whichever first occurs.

#### 10. PREMIUM ADJUSTMENT

The premium stated for this Form is provisional. Within 30 days after the termination or expiration of this insurance the Insured shall report to the Insurer the actual completed contract price and the value of any property not included in such completed contract price and insured by this Form, or in the absence of a contract price the insured shall report the total completed value of the project. The actual premium shall be calculated from inception date of this Form on the total value so reported at the rate shown on the "Declaration Page(s)". If the premium so calculated exceeds the provisional premium the Insured shall pay to the Insurer the amount of such excess. If such premium is less than the provisional premium, the Insurer shall refund to the Insured the amount of the difference.

#### 11. VALUATION

"Replacement Cost":

- (a) In the event of loss of or damage to the insured property the insurer agrees to make settlement on the basis of "replacement cost" subject to the following provisions:
  - i. "replacement" shall be effected by the insured with due diligence and dispatch;
  - ii. settlement on a "replacement cost" basis shall be made only when "replacement" has been effected by the insured and in no event shall it exceed the amount actually and necessarily expended for such "replacement";
  - iii. any other insurance effected by or on behalf of the insured in respect of the perils insured against by this form on the property to which this clause is applicable shall be on the basis of "replacement cost";
  - iv. failing compliance by the insured with any of the above provisions of 11.(a), settlement shall be based on the actual cash value at the time and place of loss or damage, but not exceeding what it would then cost to repair or replace the material of like kind and quality.
- (b) in the event that new property of like kind and quality is not obtainable, new property which is as similar as possible to that lost or damaged and which is capable of performing the same function shall be deemed to be new property of like kind and quality for the purposes of this clause.
- (c) this clause 11. does not apply to any increase in the cost of "replacement" occasioned by a restriction or prohibition in any bylaw, regulation, ordinance or law.

Actual Cash Value: Various factors shall be considered in the determination of actual cash value. The factors to be considered include (but are not limited to) replacement cost less any depreciation, and market value. In determining depreciation, consideration will be given to the insured property's condition immediately before the loss or damage, the insured property's resale value, the insured property's normal life expectancy and actual or potential obsolescence of the insured property.

#### 12. LOSS ADJUSTMENT

Any claim for loss or damage under this Form shall be adjusted with, if named in this policy, the General Contractor or Owner.

#### 13. BREACH OF CONDITIONS

Where a loss occurs and there has been a breach of condition relating to a matter before the happening of the loss, which breach would otherwise disentitle the Insured from recovery under this Form, the breach shall not disentitle the Insured from recovery if the Insured establishes that the loss was not caused or contributed to by the breach of condition or if the breach of condition occurred in any portion of the project over which the Insured has no control.

#### 14. REINSTATEMENT

Loss under any item of this Form shall not reduce the applicable amount of insurance.

#### 15. SUBROGATION

The Insurer, upon making any payment or assuming liability therefor under this Form, shall be subrogated to all rights of recovery of the Insured against others and may bring action to enforce such rights. Notwithstanding the foregoing, all rights of subrogation are waived against any corporation, firm, individual or other interest with respect to which insurance is provided by this Form.

Where the net amount recovered, after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the Insurer and the Insured in the proportion in which the loss or damage has been borne by them respectively.

Any release from liability entered into by the insured prior to loss shall not affect the right of the Insured to recover.

#### 16. VERIFICATION OF VALUES

The Insurer or its duly appointed representative shall be permitted at all reasonable times during the policy period, or within a year after termination or expiration, to inspect the insured property and to examine the Insured's books, records and such policies as relate to any insured property. Such inspection or examination shall not waive nor in any manner affect any of the terms or conditions of this Form.

#### 17. DEFINITIONS

Wherever used in this Form:

- (a) "Clean Up" means removal, containment, treatment, detoxification, stabilisation, neutralisation, or remediation of "pollutants", including testing which is integral to these processes;
- (b) "Declaration Page(s)" means, the Declaration Page(s) applicable to this Form including any supplementary page(s) or schedule(s) of coverages attached to them, applicable to this policy;
- (c) "Fire protective equipment" includes tanks, water mains, hydrants, valves and any other equipment whether used solely for fire protection or jointly for fire protection and for other purposes but does not include:
  - (i) branch piping from a joint system where such branches are used entirely for purposes other than fire protection;
  - (ii) any water mains or appurtenances located outside of the "project site" and forming a part of the public water distribution system;
  - (iii) any pond or reservoir in which the water is impounded by a dam.
- (d) "Leakage from 'fire protective equipment'" means the leakage or discharge of water or other substance from within the equipment used for fire protection purposes for the project specified on the "Declaration Page(s)" or for adjoining premises and loss or damage caused by the fall or breakage or freezing of such equipment.

- (e) "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including odour, vapour, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- (f) "Project site" means the site of the project described on the "Declaration Page(s)".
- (g) "Replacement" includes repair, construction or reconstruction with new property of like kind and quality.
- (h) "Replacement Cost" means whichever is the least of the cost of replacing, repairing, constructing or reconstructing the property on the same "project site" with new property of like kind and quality and for like occupancy. No deduction shall be made for:
  - (i) depreciation;
  - (ii) necessary and reasonable professional fees; or
  - (iii) reasonable contractor's and sub-contractor's overhead and profit.
- (i) "Occurrence" means any one loss, disaster or casualty, or series of losses, disasters or casualties arising out of one event.