

Commercial Building and Contents Named Perils Form

WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN SECTION 17. DEFINITIONS

1. INDEMNITY AGREEMENT

In the event that any of the insured property is lost or damaged during the policy period by an insured peril, the Insurer will indemnify the Insured against the direct loss or damage so caused to an amount not exceeding whichever is the least of:

- (a) the value of the lost or damaged property as determined in Clause 15. LOSS SETTLEMENT – BASIS OF VALUATION, or if the "declarations page(s)" specifies that this policy is endorsed with a Form that contains a Replacement Cost clause applicable to this Form, by the valuation determined in the replacement cost clause;
 - (b) the interest of the Insured in the property;
 - (c) the amount of insurance specified on the "declarations page(s)" for the lost or damaged property.
- The inclusion of more than one person or interest shall not increase the Insurer's liability.

2. INSURED PROPERTY

This Form insures those of the following items for which an amount of insurance is specified on the "declarations page(s)" and only while at the "premises":

- "Building"
- "Equipment"
- "Stock"
- "Contents of Every Description"
- "Property of Every Description"

3. DEDUCTIBLE

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

4. COINSURANCE

This clause applies separately to each item for which a coinsurance percentage is specified on the "declarations page(s)" and only where the amount of loss or damage exceeds the lesser of 5% of the applicable amount of insurance or \$10,000.

The Insured shall maintain insurance concurrent with this form on the insured property to the extent of at least the amount produced by multiplying the "value of the property" as defined in this Section 4. COINSURANCE by the coinsurance percentage specified on the "declarations page(s)". If the Insured fails to do so, the Insured shall be entitled to recover only that portion of any loss that the amount of insurance in force at the time of loss bears to the amount of insurance required to be maintained by this clause.

"Value of the Property": For the purpose of applying this Section 4. COINSURANCE, the "value of the property" is determined by Section 15. LOSS SETTLEMENT – BASIS OF VALUATION. However, if the "declarations page(s)" specifies that this policy is endorsed with a Form that contains a Replacement Cost clause applicable to this Form, then for the purpose of applying this Section 4. COINSURANCE, the Replacement Cost clause will establish the "value of the property" to which the Replacement Cost Clause applies and Section 15. LOSS SETTLEMENT – BASIS OF VALUATION will be of no force or effect with respect to that valuation.

5. INSURED PERILS

This form insures against direct physical loss of or damage to the insured property caused by the following perils:

- (A) **FIRE OR LIGHTNING**
- (B) **EXPLOSION:** Except with respect to explosion of natural, coal or manufactured gas, there shall in no event be any liability for loss or damage caused by explosion, rupture or bursting in or of the following property owned, operated or controlled by the Insured:
 - (i) (a) the portions containing steam or water under steam pressure of all boilers generating steam, and piping or other equipment connected to said boilers and containing steam or water under steam pressure;
 - (b) piping and apparatus or their parts normally containing steam or water under steam pressure from an external source and while under such pressure;
 - (c) the combustion chambers or fire boxes of steam generating boilers of the chemical recovery type and the flues or passages which conduct the gases of combustion from them;
 - (d) smelt dissolving tanks;
 - (ii) other vessels and apparatus, and connected pipes, while under pressure, or while in use or in operation, provided their maximum normal internal working pressure exceeds 103 kilopascals (15 pounds per square inch) above atmospheric pressure, except that liability is specifically assumed for loss or damage resulting from the explosion of manually portable gas cylinders;
 - (iii) moving or rotating machinery or parts of same when such loss or damage is caused by centrifugal force or mechanical breakdown;
 - (iv) any vessels and apparatus and connected pipes while undergoing pressure tests, but this exclusion shall not apply to other insured property that has been damaged by such explosion;
 - (v) gas turbines.

The following are not explosions within the intent or meaning of this section:

 - (a) electric arcing or any coincident rupture of electrical equipment due to such arcing;
 - (b) bursting or rupture caused by hydrostatic pressure or freezing;
 - (c) bursting or rupture of any safety disc, rupture diaphragm or fusible plug.
- (C) **IMPACT BY AIRCRAFT, SPACECRAFT OR LAND VEHICLE:** The terms Aircraft and Spacecraft include articles dropped from them.
There shall in no event be any liability for cumulative damage or for loss or damage:
 - (i) caused by land vehicles belonging to or under the control of the Insured or any of his employees;
 - (ii) to aircraft, spacecraft or land vehicles causing the loss;
 - (iii) caused by any aircraft or spacecraft when being taxied or moved inside or outside of a "building".
- (D) **RIOT, VANDALISM OR MALICIOUS ACTS:** The term Riot includes open assemblies of strikers inside or outside the "premises" who have quitted work and of locked-out employees.
There shall in no event be any liability for loss or damage:
 - (i) due to cessation of work or by interruption to process or business operations or by change(s) in temperature;
 - (ii) due to flood or release of water impounded by a dam, or due to any explosion other than an explosion in respect of which there is insurance under Section 5. INSURED PERILS, PERIL (B), EXPLOSION;
 - (iii) due to theft or attempted theft.
- (E) **SMOKE:** The term "smoke" means smoke due to a sudden, unusual and faulty operation of any stationary furnace. There shall in no event be any liability for any cumulative damage.
- (F) **LEAKAGE FROM "FIRE PROTECTIVE EQUIPMENT":** The term Leakage from "Fire Protective Equipment" means:
 - (i) the leakage or discharge of water or other substances from;
 - (ii) the collapse of;
 - (iii) the rupture due to freezing of;

"fire protective equipment" for the "premises" or for adjoining structures.
- (G) **WINDSTORM OR HAIL:** There shall in no event be any liability for loss or damage:
 - (i) to the interior of the "building" or to "contents of every description" unless damage occurs concurrently with and results from an aperture caused by windstorm or hail;

- (ii) directly or indirectly caused by any of the following, whether driven by wind or due to windstorm or not: snow-load, ice-load, tidal wave, high water, overflow, flood, waterborne objects, waves, ice, land subsidence, landslide.

6. EXCLUSIONS

A. EXCLUDED PROPERTY

This form does not insure loss of or damage to:

- (a) property at locations which, to the knowledge of the Insured, are vacant, unoccupied or shut down for more than 30 consecutive days;
- (b) electrical devices, appliances or wiring caused by artificially generated electrical currents, including arcing. This exclusion does not apply to loss or damage caused directly by resultant fire or explosion;
- (c) growing plants, trees, shrubs or flowers, all while outside of the "building", except as provided in Section 7. EXTENSIONS OF COVERAGE, Item (D) Growing Plants, Trees, Shrubs or Flowers outside of the "Building";
- (d) money, "cash cards", bullion, platinum or other precious metals or alloys, securities, stamps, tickets (except lottery tickets) or tokens, or evidence of debt or title;
- (e) automobiles, watercraft, amphibious or air cushion vehicles, aircraft, spacecraft, trailers, motors or other accessories attached to or mounted on such property. This exclusion does not apply to watercraft or amphibious or air cushion vehicles held for sale, or to unlicensed automobiles or unlicensed trailers used in the business of the Insured when on the "premises";
- (f) property illegally acquired, kept, stored or transported; property seized or confiscated for breach of any law or by order of any public authority;
- (g) roadways, walkways, parking lots, other exterior paved surfaces, retaining walls or permanently installed landscape structures outside of the "building". This exclusion does not apply to the first \$10,000 of any loss otherwise insured;
- (h) "equipment" or "stock" occasioned by or happening through their undergoing any process involving the application of heat.

B. EXCLUDED PERILS

This form does not insure against loss or damage, or increased costs, caused directly or indirectly:

- (a) in whole or in part by war, invasion, act of foreign enemy, hostilities (whether war is 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;
- (b) (i) by any nuclear incident (as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any amending law) 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) proximately or remotely, arising in consequence of or contributed to by the enforcement of any bylaw, regulation, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, which bylaw, regulation, ordinance or law makes it impossible to repair or reinstate the property as it was immediately prior to the loss.

C. POLLUTION EXCLUSION

This form does not insure against:

- (a) 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". This exclusion does not apply:
 - (i) if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is directly caused by an insured peril, or
 - (ii) to loss or damage caused directly by a resultant insured peril;

- (b) 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".

D. OTHER EXCLUDED LOSSES:

This form does not insure loss of or damage to "building", "equipment" or "stock" caused directly or indirectly:

- (i) by any dishonest or criminal act committed by the Insured or any agent of the Insured, acting alone or in collusion with others;
- (ii) by theft or attempted theft committed by any employee of the Insured, acting alone or in collusion with others;
- (iii) by any dishonest or criminal act committed by anyone, except as stated in (ii), when the Insured or any agent of the Insured knew or ought to have known prior to the loss or damage, of the dishonest or criminal act. This exclusion (iii) does not apply if, upon becoming aware of the dishonest or criminal act, the Insured or any agent of the Insured immediately notifies the police and the Insurer.

7. EXTENSIONS OF COVERAGE

The following extensions of coverage shall not increase the amounts of insurance applying under this form and are subject to all the conditions of this Form (other than Section 4. COINSURANCE).

- (a) **Removal:** If any of the insured property is necessarily removed from the "premises" to prevent loss of or damage to or further loss of or damage to such 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 7 days only, or for the unexpired term of the policy if less than 7 days, insure the property removed and any property remaining at the "premises" in the proportions which the value of the property in each of the locations bears to the value of the property in them all.

- (b) (i) **Debris Removal:** The Insurer will indemnify the Insured for expenses incurred in the removal from the "premises" of debris of the insured property, occasioned by loss of or damage to such property, for which loss or damage insurance is afforded under this Form.

The amount payable under this extension shall not exceed 25% of the sum of:

- 1) the total amount payable for the direct loss of or damage to insured property; and
- 2) the amount of the applicable deductible.

- (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 "premises".

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

- (1) to "clean up" "pollutants" from land or water; or
- (2) 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) **Personal Property of Officers and Employees:** At the option of the Insured, "equipment" also includes personal property of officers and employees of the Insured. The insurance on such property:
 - (i) shall not attach if it is insured by the owner, unless the Insured is obliged to insure it or is liable for its loss or damage;
 - (ii) is, in any event, limited to a maximum recovery of \$250 in respect of any one officer or employee;
 - (iii) shall apply only to loss or damage occurring at the "premises".

- (d) **Growing Plants, Trees, Shrubs or Flowers outside the "Building":** This form is extended to insure loss of or damage to growing plants, trees, shrubs or flowers outside the "building" caused directly by the insured perils other than loss of or damage by the perils of windstorm or hail as stated in Section 5. INSURED PERILS, Item (G) WINDSTORM OR HAIL. This extension of coverage shall be limited to a maximum recovery, including debris removal expense, of:

- (i) \$500 for each growing plant, tree, shrub or flower; and
- (ii) \$5,000 for any one "occurrence".

8. PERMISSION

Permission is granted:

- (a) for other insurance concurrent with this form;
- (b) to make additions, alterations or repairs;
- (c) to do such work and to keep and use such articles, materials and supplies in such quantities as are usual or necessary to the Insured's business.

9. BREACH OF CONDITION

If the Insured does not comply with a condition of this insurance, any claim for subsequent loss or damage is not recoverable. The Insurer will not deny a claim for this reason if the Insured proves that the noncompliance neither caused nor worsened the loss or damage. Coverage will not be affected if the Insured fails to comply with a condition in part of the "premises" over which the Insured has no control.

10. REINSTATEMENT

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

11. SUBROGATION

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

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.

12. PROPERTY PROTECTION SYSTEMS

It is a condition of this insurance, for the purpose of Clause 9, that the Insured shall immediately notify the Insurer of any interruption to, or flaw or defect, coming to the knowledge of the Insured, in any:

- (a) sprinkler or other fire extinguishing system; or
- (b) fire detection system; or
- (c) intrusion detection system;

and shall also immediately notify the Insurer of the cancellation or non-renewal of any contract which provides monitoring or maintenance services to any of these systems or of the notification of the suspension of police service in response to any of these systems.

13. PREMIUM ADJUSTMENT

This clause is applicable if a specific amount of insurance is shown on the "declarations page(s)" for "stock". If, within six (6) months after the expiry or anniversary date of each policy period, the Insured shall file with the Insurer a Premium Adjustment Application Form showing, for the policy period, the value of the "stock" on the last day of each month at each "premises" as commented upon by the Insured's Accountant, the actual premium for the policy period shall then be calculated at the rate applying to each "premises" for the average amount of the total values declared. If the premium paid by the Insured for such "stock" exceeds the actual premium thus calculated, the Insurer shall refund to the Insured any excess paid, subject to a maximum refund of 50% of the premium paid. In the event of any monthly declared values being in excess of the amount of insurance, the amount of the excess shall not be included in the premium adjustment calculations.

14. 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.

15. LOSS SETTLEMENT - BASIS OF VALUATION

The value of the insured property shall be determined as follows:

- (a) unsold "stock": the actual cash value of the property at the time and place of loss or damage, but in no event to exceed what it would cost to repair or replace with material of like kind and quality;
- (b) sold "stock": the selling price after allowance for discounts;
- (c) the property of others in the custody or control of the Insured for the purpose of performing work upon it: the amount for which the Insured is liable, but not exceeding the actual cash value at the time and place of loss or damage plus allowance for labour and materials expended to such time;
- (d) tenant's improvements:
 - (i) if repaired or replaced with due diligence and dispatch, the amount actually and necessarily expended, but not exceeding the actual cash value of the tenant's improvements at the time and place of loss or damage;
 - (ii) if not repaired or replaced with due diligence and dispatch, that portion of the original cost of the lost or damaged tenant's improvements which the unexpired term of the lease at the time of loss or damage bears to the period(s) from the date(s) such tenant's improvements were made to the expiration date of the lease;
- (e) business records, including those which exist on electronic or magnetic media (other than pre-packaged software programs):
 - (i) the cost of blank materials for reproducing the records; and
 - (ii) the costs of labour to transcribe or copy the records when there is a duplicate.
- (f) all other insured property under this Form and for which no more specific conditions have been set out: 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 with material of like kind and quality.

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

16. PROPERTY OF OTHERS

At the option of the Insurer, any loss may be paid to the Insured or adjusted with and paid to the customer or the owner of the property.

17. DEFINITIONS

Wherever used in this Form:

- (a) "Building" means the building(s)" described on the "declarations page(s)" and includes:
 - (i) fixed structures pertaining to the "building(s)" and located on the "premises";
 - (ii) additions and extensions communicating and in contact with the building(s);
 - (iii) permanent fittings and fixtures attached to and forming part of the building(s);
 - (iv) materials, equipment and supplies on the "premises" for maintenance of, and normal repairs and minor alterations to the "building" or for building" services;
 - (v) growing plants, trees, shrubs or flowers inside the "building" used for decorative purposes when the Insured is the owner of the "building".
- (b) "Cash cards" means cards designed to store a cash value by electronic means as a mode of payment, without a personal identification number and without direct access to a bank or other account.
- (c) "Clean up" means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or remediation of "pollutants", including testing which is integral to any of these processes.
- (d) "Contents of every description" means "equipment" and "stock".
- (e) "Declarations page(s)" means the declarations page(s) applicable to this form including any supplementary page(s) or schedule(s) of coverages attached to them, applicable to this policy;
- (f) "Equipment" means:

- (i) generally all contents usual to the Insured's business, including furniture, furnishings, fittings, fixtures, machinery, tools, utensils and appliances, other than "building" or "stock";
- (ii) similar property belonging to others which the Insured is under obligation to keep insured or for which the Insured is legally liable;
- (iii) tenant's improvements, which are defined as building improvements, alterations and betterments made at the expense of the Insured to a "building" occupied by the Insured and which are not otherwise insured, provided the Insured is not the owner of such "building". If the Insured purchased the use interest in tenant's improvements made by a predecessor tenant, this form applies as though such tenant's improvements had been made at the expense of the Insured.
- (g) "Fire protective equipment" includes tanks, water mains, hydrants, valves and any other apparatus 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 "premises" and forming a part of the public water distribution system;
 - (iii) any pond or reservoir in which the water is impounded by a dam.
- (h) "Occurrence" means any one loss, disaster or casualty, or series of losses, disasters or casualties arising out of one event.
- (i) "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.
- (i) "Premises" means the entire area within the property lines and areas under adjoining sidewalks and driveways at each location described on the "declarations page(s)" and in or on vehicles within 100 metres (328 feet) of such locations.
- (k) "Property of every description" means "building", "equipment" and "stock".
- (l) "Stock" means:
 - (i) merchandise of every description usual to the Insured's business;
 - (ii) packing, wrapping and advertising materials; and
 - (iii) similar property belonging to others which the Insured is under obligation to keep insured or for which the Insured is legally liable.