

Motor Truck Cargo Carriers' Legal Liability

WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN THE DEFINITIONS SECTION OF THIS FORM.

1. INDEMNITY AGREEMENT

This form covers the legal liability of the "Insured" as a motor truck carrier, against all risks of "Direct Physical Loss or Damage", except as hereinafter provided, to the "Property of Others" while in the care, custody and control of the "Insured", and while such property is:

- (1) on, in, or towed by a "Vehicle(s)" owned by, or operated by, or on behalf of the "Insured", including during loading or unloading of such "Vehicle(s)",
- (2) temporarily stored in terminals, warehouses or depots incidental to transportation for a period of time not to exceed thirty (30) days or the period of time for which the "Insured" is liable as a carrier, whichever is less;
- (3) in safekeeping in any building or premises following a breakdown or accident to a vehicle covered hereunder but in no event to exceed thirty (30) days or the period of time for which the "Insured" is liable as a carrier, whichever is less;

all as shown on the "Declaration Page(s)" and while in due course of transit within the territorial limits of Canada and the continental United States of America.

2. ADDITIONAL COVERAGES

This form extends to cover the legal liability of the "Insured" for the following but only those items for which an amount of insurance is specified on the "Declaration Page(s)" and only for the limit specified therein:

- (1) Contingent Liability: The contingent liability of the "Insured" for loss or damage to "Property of Others" while in due course of transit in the custody of any other land carrier to whom the property is transferred or transhipped by the "Insured". It being the intent of this clause to protect the "Insured" in the event that the other carrier fails to indemnify the owner of the goods and the "Insured" is held liable for such loss or damage.
- (2) Debris Removal Expense: The expenses necessarily incurred by the "Insured" in the removal of the debris of the property insured, including fire department charges, occasioned by loss or damage not otherwise excluded hereunder.

This form also extends to cover:

- (3) Freight Charges: Freight Charges due the "Insured" for transporting the property if such charges are rendered uncollectible as a direct result of loss or damage to the property insured and not otherwise excluded by this policy. This coverage applies only if an amount of insurance is specified on the "Declaration Page(s)" and only for the limit specified therein.
- (4) Uninsured property, being the equipment of the "Insured" or of others, that is used to secure the "Property of Others" while the "Vehicle(s)" is in transit, provided such property is lost or damaged as a result of loss or damage to "Property of Others" and not otherwise excluded by this form. For the purposes of this extension, uninsured property shall include tarpaulins, chains, straps and fittings and other similar property used to secure "Property of Others". The maximum liability of the Insurer under this extension shall not exceed \$5,000 in any one loss, casualty or disaster.
- (5) Reloading Expenses: The expenses necessarily incurred by the "Insured" to reload "Property of Others" which has spilled, dislocated, been exposed to the weather, or immobilized, as a direct result of collision, upset, or overturn of the cargo carrying "vehicle(s)".

This extension only applies when there has been no "Direct Physical Loss or Damage" to any "Property of Others".

The maximum liability of the Insurer under this extension shall not exceed \$15,000, or the amount specified on the "Declaration Page(s)", whichever is greater, in any one loss, casualty, or disaster.

Coverage under Additional Coverages (2) Debris Removal and (5) Reloading Expenses shall 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".

3. LIMITS OF INSURANCE

- a) The maximum liability of the Insurer in any one loss, casualty or disaster shall not exceed the Catastrophe Limit as stated on the "Declaration Pages(s)" regardless of the number of:
 - (i) "Insured(s)"; or
 - (ii) "Claims" made or "Actions" brought; or
 - (iii) Persons or organizations making "Claims" or bringing "Actions".
- b) The liability of the Insurer shall not exceed the limits of insurance specified on the "Declaration Page(s)" for any one "Occurrence", in respect to:
 - (i) Any One Vehicle;
 - (ii) at Any One Terminal, Warehouse, or Depot;
 - (iii) at Unspecified Locations;
 - (iv) Contingent Liability;
 - (v) Debris Removal Expense;
 - (vi) Freight Charges;

4. POLICY EXCLUSIONS:

- A. This Form does not cover liability or expense for:
 - (a) delay, loss of market or loss of use, or any other indirect or consequential loss of any kind;
 - (b) loss or damage caused by latent defect, inherent vice, deterioration, wear and tear, rodents, insects or vermin;
 - (c) loss, destruction or damage caused directly or indirectly by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of the "Insured" or any other party of interest, employees or agents of the "Insured", or any person or company to whom the property may be entrusted;
 - (d) loss or shortage disclosed on taking inventory, or any mysterious disappearance;
 - (e) loss or damage caused by or resulting from dampness of atmosphere, dryness of atmosphere, heating or freezing or extremes of temperature, shrinking, spoilage, evaporation, loss of weight, leakage of contents, rust, corrosion, contamination, or change in flavour or colour or texture or finish unless such loss or damage is caused directly by fire, lightning, flood, windstorm, tornado, hail, collision or upset or overturn of the cargo carrying vehicle, collapse of bridges or wharves or docks or culverts, smoke, the stranding or sinking or burning or collision of any regularly scheduled ferry, theft or burglary, or vandalism or malicious acts;
 - (f) loss or damage caused by or resulting from change in temperature resulting from breakdown, failure or inefficient operation of any refrigeration, cooling or heating apparatus (including connections or supply pipes) unless such coverage is specifically stated on the "Declaration Page(s)";
 - (g) loss or damage caused directly or indirectly by:
 - i. 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. contamination by radioactive material;

- (h) loss, destruction or damage caused by civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

B. This Form excludes liability for loss or damage to the following property;

- (a) money, bullion, securities, jewellery or other similar valuables, deeds, accounts, bills, notes, evidence of debt or title;
- (b) tobacco, tobacco products, alcohol, or alcoholic beverages unless specifically stated on the "Declaration Page(s)";
- (c) livestock or other live animals or live birds or live fish, except against death or injuries rendering death immediately necessary directly caused by fire, lightning, flood, windstorm, tornado, hail, collision or upset or overturn of the cargo carrying vehicle, collapse of bridges or wharves or docks or culverts, smoke, the stranding or sinking or burning or collision of any regularly scheduled ferry, vandalism or malicious acts, but specifically excluding escape or mysterious disappearance;
- (d) paintings, statuary, other works of art and articles of virtue, except against absolute total loss, and only if such loss is directly caused by fire, lightning, flood, windstorm, tornado, hail, collision or upset or overturn of the cargo carrying vehicle, collapse of bridges or wharves or docks or culverts, smoke, the stranding or sinking or burning or collision of any regularly scheduled ferry;
- (e) property illegally acquired, kept, stored or transported; property illegally sold; or property seized or confiscated for breach of any law or by order of any public authority;
- (f) "Vehicle(s)" except vehicles that are transported as "Property of Others" upon or within a "Vehicle" that is owned by, or operated by, or on behalf of the "Insured";
- (g) property which is airborne or waterborne, except while on any regularly scheduled ferry, railway car or transfer barge;
- (h) data contained in storage devices or other equipment that is property of others but this exclusion does not apply to physical damage to such devices or equipment.

C. Terrorism Exclusion

This Insurance does not apply to liability or expense arising directly or indirectly, in whole or in part, out of "Terrorism" or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate "Terrorism". This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the "Claim".

5. DEDUCTIBLE

Each claim for loss, damage or expense shall be adjusted separately, and from the amount of each such adjusted claim, the sum specified on the "Declaration Page(s)" shall be deducted. Should any "Occurrence" give rise to the application of more than one deductible amount, only the highest deductible will be applied.

6. VEHICLE SUBSTITUTION OR ADDITION

This Form also applies to a "Vehicle" owned by or operated by or on behalf of the "Insured" even though not listed in the schedule if:

- (a) such "Vehicle" was not owned or operated by the "Insured" at or before the inception date of this policy and was acquired by the "Insured" during the policy period. The "Insured" must notify the Insurer within thirty (30) days following such acquisition; or
- (b) such "Vehicle" is temporarily used as a substitute for a scheduled "Vehicle" that is withdrawn from use because of breakdown, repair, loss or destruction of the "Vehicle". The "Insured" must notify the Insurer within thirty (30) days following such substitution.

The Named Insured shall pay the additional premium required. The limit of the Insurer's liability with respect to "Property of Others" being carried in or upon a newly acquired or temporary substitute "Vehicle" which replaces another shall be the amount applicable to the replaced "Vehicle". The limit of the Insurer's liability with respect to "Property of Others" being carried in or upon a newly acquired "Vehicle" which does not replace another shall be the lowest amount shown in the schedule of vehicles for any one "Vehicle" if no similar "Vehicles" are listed in the schedule.

7. REFRIGERATION BREAKDOWN AND WARRANTY CLAUSE

This Policy insures the following but only if an amount of insurance is specified on the "Declaration Page(s)":

At the request of the "Insured" and in consideration of the rate charged, this policy is hereby extended to cover the legal liability of the "Insured" as a carrier for "Direct Physical Loss or Damage" to property covered under this policy caused by a change in temperature resulting from the breakdown, failure or inefficient operation of any temperature controlled apparatus (including connections or supply pipes).

It is warranted that "Vehicles" containing temperature controlled property shall be equipped with a signal device that is in working order and operating at all times and visible to the driver, that shall indicate to the driver if there is any breakdown, failure or inefficient operation of the temperature control equipment.

It is also warranted by the "Insured" that "Vehicles" containing temperature controlled property shall not be left unattended for more than eight (8) hours at any one time.

Each claim for loss or damage covered under the Refrigeration Breakdown and Warranty clause shall be adjusted separately, and from the amount of each such adjusted claim, the sum specified on the "Declaration Page(s)" shall be deducted.

The Insurer's liability assumed under the Refrigeration Breakdown and Warranty Clause shall not exceed the sum specified on the "Declaration Page(s)" in any one loss, disaster or casualty but in no event shall the foregoing limit of liability be considered cumulative with the limits of liability specified elsewhere in this policy.

If the "Insured" does not comply with these warranties, the Insurer will not pay for any claim for loss, damage or expense caused by or resulting from a change in temperature resulting from the breakdown, failure or inefficient operation of any temperature controlled apparatus occurring during the period of time the "Insured" has not complied, regardless of whether or not such non-compliance is causative or in any way connected to such claim.

It is a condition of this Insurance that the cover provided by the Refrigeration Breakdown and Warranty clause shall apply only to property while loaded on cargo carrying "Vehicle(s)".

8. REPORTING CLAUSE

This clause applies only if this Form is on a reporting basis and an adjustment rate is shown on the "Declaration Page(s)".

- (a) The premium shown on the "Declaration Page(s)" is provisional only.
- (b) The "Insured" agrees to keep a complete and accurate record of all receipts from the business as a motor truck carrier.
- (c) The "Insured" shall report to the Insurer or its authorized representative on or before the thirtieth (30th) day following each anniversary date of the policy, a true statement of the full amount of "Gross Receipts" generated from the "Insured's" business as a carrier during the policy term. The rate stated on the "Declaration Page(s)" shall be applied to the "Gross Receipts" figure duly reported and the earned premium determined.
- (d) If the earned premium so determined exceeds the provisional premium, then the Named Insured shall pay the Insurer forthwith the difference.
- (e) If the earned premium is less than the provisional premium then the Insurer shall refund the difference forthwith to the Named Insured, subject to a minimum retained premium of 75% of the provisional premium.
- (f) The Insurer or its duly authorized representative shall be permitted at all reasonable times during the term of the policy or within a year after termination or expiration to examine the "Insured's" books, records and such policies as relate to any property insured hereunder. Such inspection or examination shall not waive nor in any manner affect any of the terms or conditions of the Form.
- (g) In the event of any claim under this policy, the Insurer shall be liable for no greater proportion of such claim than the total "Gross Receipts" last reported by the Named Insured prior to the claim bears to the actual "Gross Receipts" as of the date for which such report was made.

- (h) In the event of cancellation of this policy, the basis of adjustment of premium shall be as provided above and not as provided in the Statutory Conditions attached to this policy.

9. DEFINITIONS

"Action(s)" means a civil proceeding or demand against the "Insured" seeking damages to which this insurance applies and arising out of the "Insured's" operations as a motor truck carrier.

"Claim(s)" means a demand against the "Insured" or the filing of a suit or the initiation of an arbitration proceeding naming the "Insured", seeking damages arising out of the "Insured's" operations as a motor truck carrier, or an "Occurrence" which the "Insured" has knowledge of which may result in a demand against the "Insured" seeking damages arising out of the "Insured's" operations as a motor truck carrier.

"Clean Up" means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or remediation of "Pollutants", including testing which is integral to the aforementioned processes.

"Declaration Page(s)" means the Declaration Page(s) applicable to this form.

"Direct Physical Loss or Damage" means, permanent deprivation or physical impairment or destruction, and shall not include loss for delay, loss of use, loss of market, or other economic or indirect loss of any kind.

"Gross Receipts" means the total amount of earned receipts, whether collected or uncollected, to which the "Insured" is entitled for packing, loading and unloading, shipment and transportation of "Property of Others", irrespective of whether the shipment or transportation originates with the "Insured" or other carrier.

"Insured" means, the individual, partnership, corporation or other entity named on the "Declaration Page(s)" and includes any partner, director, officer or employee thereof while acting within the scope of their employment duties as such.

"Occurrence(s)" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions giving rise to one or more claims that takes place during the Policy Period.

"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.

"Property of Others" means lawful goods and merchandise accepted for shipment by the "Insured" under tariff, contract, bill of lading, shipping receipt or similar document.

"Terrorism" means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.

"Vehicle(s)" means licensed motor vehicle or trailer or semi-trailer or combination thereof in tandem.

GENERAL POLICY TERMS AND CONDITIONS

1. ABANDONMENT

Under no circumstances shall there be abandonment of any "Property of Others" by the "Insured" to the Insurer.

2. PRIVILEGE TO ADJUST WITH OWNER

In the event of loss or damage to "Property of Others" held by the "Insured" for which a claim is made under this policy, the Insurer reserves the right to adjust such loss or damage with the owner or owners of the property, and the payment to such owner or owners of the amount due from the Insurer shall be in full satisfaction of any claim of the "Insured" for which such payment by the Insurer has been made.

3. LEGAL PROCEEDINGS AGAINST INSURED

If legal proceeding is brought against the "Insured" to enforce a claim for loss or damage covered by this policy, the "Insured" shall immediately forward to the Insurer every summons or other process as soon as the same shall have been served on the "Insured", and the Insurer will, at its own cost defend such suit in the name and on behalf of the "Insured".

4. REINSTATEMENT OF LIMIT AFTER LOSS

Any loss hereunder shall not reduce the amount of insurance applicable to this Form, unless an aggregate limit per policy period is stated on the "Declaration Page(s)", or specially endorsed on this policy.

5. OTHER INSURANCE

If other valid and collectable insurance is available to the "Insured", or any other interested party, which would apply in the absence of this insurance, the coverage afforded by this insurance shall apply only as excess insurance over such other insurance.

6. INSPECTION RECORDS

The Insurer has the right, at any reasonable time either before or within one (1) year after cancellation of the Policy, to inspect the records of the "Insured" as respects shipments received or due to be declared within the terms of this Policy.

7. POLICY PERIOD

The Insurer will only be liable for claims or expenses caused by accidents or "Occurrences" that occur during the period of insurance, and then only provided that the "Insured" reports the claim as required under the terms of the policy.

8. NOTICE OF CLAIM AND COOPERATION

The "Insured" shall immediately notify the Insurer, in writing, of any accident, "Occurrence", or event which may give rise to a claim under this policy.

If a "Claim" or "Action" is brought against the "Insured", the Named Insured and any other involved "Insured" must:

- i. Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the "Claim" or "Action";
- ii. Authorize the Insurer to obtain records and other information;
- iii. Cooperate with the Insurer in the investigation or settlement of the claim or defence against the "Action"; and
- iv. Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person.

9. SETTLEMENT OF CLAIMS

The "Insured" shall not make any settlement of any claim, for which liability is assumed under the policy, without the written consent of the Insurer. The Insurer, however, shall have the right to settle any claim or suit at its own cost at any time. The "Insured", whenever requested, shall aid in securing information and evidence and the attendance of witnesses and shall cooperate with the Insurer (except in a pecuniary way) in all matters which the Insurer may deem necessary in the defence of any claim or suit or appeal from any judgement in respect of any loss for which the Insurer is liable under this policy.

10. NO BENEFIT TO BAILEE

It is warranted by the "Insured" that this insurance shall in no way insure directly or indirectly to the benefit of any other carrier or bailee.

11. TERMINATION

- (1) This contract may be terminated,
 - a. by the Named Insured at any time on request
 - b. by the Insurer giving to the Named Insured written notice of termination at least:
 - i. five (5) days before the effective date of termination if personally delivered;
 - ii. fifteen (15) days before the effective date of termination if the contract is terminated by registered mail for non-payment of premium; or
 - iii. thirty (30) days before the effective date of termination if the contract is terminated by registered mail for any other reason.
- (2) When this contract is terminated by the Insurer,
 - a. the Insurer shall refund the excess of premium actually paid by the Named Insured over the proportionate premium for the expired time, subject to any minimum retained premium specified; and
 - b. the refund shall accompany the notice, unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
- (3) When this contract is terminated by the Named Insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the Named Insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen (15) and thirty (30) days mentioned in clauses (1)(b)(ii) and (iii) of this condition commence to run on the day following the receipt of the registered letter at the post office to which it is addressed.

12. LEGAL ACTION AGAINST INSURER

No person or organization has a right under this policy to join the Insurer as a party or otherwise bring the Insurer into an "Action" asking for compensatory damages from an "Insured" or 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 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.

13. SALVAGE AND PROTECTION OF PROPERTY

The "Insured", in the event that any "Property of Others" is damaged, destroyed or lost shall take all reasonable steps to protect and preserve the "Property of Others" from further damage or to recover the "Property of Others".

The Insurer shall contribute pro rata toward any reasonable and proper expenses in connection with the foregoing according to the respective interests of the parties. These expenses do not increase the Limits of Insurance.

14. MATERIAL CHANGE

Any change material to the risk and within the control and knowledge of the "Insured" avoids the contract as to the part affected by the change, unless the change is promptly notified in writing to the Insurer. The Insurer, when so notified, may return the unearned portion, if any, of the premium paid and cancel the contract. Alternatively, the Insurer may notify the Named Insured in writing that, if the Named Insured desires the contract to continue in force, the Named Insured must, within fifteen days of the receipt of the notice, pay to the Insurer an additional premium. In default of such payment the contract is no longer in force and the Insurer shall return the unearned portion, if any, of the premium paid.

15. NOTICE TO AUTHORITIES

Where the loss is due to malicious mischief, burglary, robbery, theft, or attempt thereat, or is suspected to be so due, the "Insured" shall give immediate notice thereof to the police or other authorities having jurisdiction.

16. CONFORMITY TO STATUTE

In the event that the deductible clause in this policy should violate any laws or statutes of any province, state or country, with reference to making compensation to shippers or consignees for property coming into the possession of the "Insured" as a carrier in connection with its transportation services, then the Insurer, subject otherwise to the terms and conditions of this policy, agrees to pay, within the limits of liability herein provided, any shipper or consignee for the loss or damage which would otherwise have been recoverable, but for the existence of the deductible clause. However, the terms of the deductible clause are to remain in full force and effect as binding between the "Insured" and the Insurer. The "Insured" agrees to reimburse the Insurer for any payment so made.

17. MISREPRESENTATION OR NON-DISCLOSURE

If the "Insured", or his representative, misrepresents or fails to disclose any material fact or circumstance(s) at the time of application for this insurance, the Insurer shall be entitled to void this policy.

If a person applying for insurance falsely describes, misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the Insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

18. FRAUD

Any fraud or wilfully false statement made in relation to a claim reported under this policy vitiates the claim of the person making the declaration.