

Warehouse Operators Edge Advantage - Warehouseman's Legal Liability

WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN CLAUSE 12

1. INDEMNITY AGREEMENT

A. The Insurer will pay those sums that the Insured becomes legally obligated to pay as "compensatory damages" because of "property damage" to which this insurance applies. This insurance applies only to "property damage" to the movable property of others stored or transported by or on behalf of the Insured. The Insurer will have the right and duty to defend the Insured against any "action" seeking those "compensatory damages". The Insurer will have no duty to defend the Insured against any "action" seeking "compensatory damages" for "property damage" to which this insurance does not apply. The Insurer may, at its discretion, investigate any "occurrence" and settle any claim or "action" that may result. But:

- a. The amount the Insurer will pay for "compensatory damages" is limited as described in clause 2, and
- b. The Insurer's right and duty to defend ends when the Insurer has used up the applicable coverage Amount in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for in clause 4.

B. This insurance applies to "property damage" only if:

- a. The "property damage" is caused by an "occurrence" that takes place in the "coverage territory", and
- b. The "property damage" occurs during the policy period, and
- c. Prior to the policy period, no Insured listed in clause 5 and no "employee" authorized by the Insured to give or receive notice of an "occurrence" or claim, knew that the "property damage" had occurred, in whole or in part. If such a listed Insured or authorized "employee" knew, prior to the policy period, that the "property damage" occurred, then any continuation, change or resumption of such "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

C. "Property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any Insured listed in clause 5 or any "employee" authorized by the Insured to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "property damage" after the end of the policy period.

D. "Property damage" will be deemed to have been known to have occurred at the earliest time when any Insured listed in clause 5 or any "employee" authorized by the Insured to give or receive notice of an "occurrence" or claim:

- a. Reports all, or any part, of the "property damage" to the Insurer or any other insurer, or
- b. Receives a written or verbal demand or claim for "compensatory damages" because of the "property damage", or
- c. Becomes aware by any other means that "property damage" has occurred or has begun to occur.

2. COVERAGE AMOUNTS

- A. The coverage Amounts shown for this rider on the declarations page and the rules below fix the most the Insurer will pay, regardless of the number of:
 - a. Insureds, or
 - b. Claims made or "actions" brought, or
 - c. Persons or organizations making claims or bringing "actions".
- B. The **Specified Location** Amount is the most the Insurer will pay for any one "occurrence" on the "premises" at the location shown on the declarations page.
- C. The **Unspecified Location** Amount is the most the Insurer will pay for any one "occurrence" at any location within the "coverage territory" that is not shown on the declarations page. This coverage includes the movement of a customer's property from one part of a building in which the customer is an occupant to another part of the same building. Coverage does not apply at any Acquired Location.
- D. The **Acquired Location** Amount is the most the Insurer will pay for any one "occurrence" at any location within Canada purchased or occupied for the first time by the Insured after the beginning of the policy period. This extension attaches at the time the purchase is completed or occupancy begins for the first time, and extends until the sooner of:
 - a. The end of the 90th day after the time the purchase is completed or occupancy begins for the first time, or
 - b. The date such location is added to this rider by endorsement, or
 - c. The expiry of the policy period.
- E. The **Warehouseman's Transit** Amount is the most the Insurer will pay for any one "occurrence" during transportation within the "coverage territory" of the movable property of others, provided such transportation is undertaken by the Insured or at the request of the Insured. Coverage begins when the movable property starts being loaded onto the transporting conveyance at its point of origin and ends when it has been unloaded at its intended destination, including any stopovers and transfers en route.

3. DEDUCTIBLE

- A. The Insurer's obligation to pay "compensatory damages" on behalf of the Insured applies only to the amount of "compensatory damages" in excess of the deductible amount shown for this Form on the declarations page, regardless of the number of persons or organizations who sustain "property damage" because of that "occurrence". The coverage Amount applicable to each "occurrence" will be reduced by the amount of such deductible.
- B. The terms of this insurance apply regardless of the application of the deductible amount.
- C. The Insurer may pay any part or all of the deductible amount to effect settlement of any claim or "action" and, upon notification of the action taken, the Insured named on the declarations page shall promptly reimburse the Insurer for such part of the deductible amount as has been paid by the Insurer.

4. SUPPLEMENTARY PAYMENTS

- A. The Insurer will pay, with respect to any claim it investigates or settles, or any "action" against an Insured it defends:

- a. All expenses incurred by the Insurer.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable coverage Amount.
- c. The Insurer does not have to furnish these bonds.
All reasonable expenses incurred by the Insured at the Insurer's request to assist the Insurer in the investigation or defence of the claim or "action", including actual loss of earnings up to \$250 a day because of time off from work.
- d. All costs assessed or awarded against the Insured in the "action".
- e. Any interest accruing after entry of judgment upon that part of the judgment which is within the applicable coverage Amount and before the Insurer has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable coverage Amount.

These payments will not reduce the coverage Amounts.

- B. If the Insurer defends an Insured against an "action" and an indemnitee of the Insured is also named as a party to the "action", the Insurer will defend that indemnitee if all of the following conditions a. through f. are met:
 - a. The "action" against the indemnitee seeks "compensatory damages" for which the Insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract".
 - b. This insurance applies to such liability assumed by the Insured.
 - c. The obligation to defend or the cost of the defence of that indemnitee has also been assumed by the Insured in the same "insured contract".
 - d. The allegations in the "action" and the information the Insurer knows about the "occurrence" are such that no conflict appears to exist between the interests of the Insured and the interests of the indemnitee.
 - e. The indemnitee and the Insured ask the Insurer to conduct and control the defence of that indemnitee against such "action" and agree that the Insurer can assign the same counsel to defend the Insured and the indemnitee.
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - i. Cooperate with the Insurer in the investigation, settlement or defence of the "action".
 - ii. Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the "action".
 - iii. Notify any other insurer whose coverage is available to the indemnitee.
 - iv. Cooperate with the Insurer with respect to coordinating other applicable insurance available to the indemnitee.
 - (2) Provides the Insurer with written authorization to:
 - i. Obtain records and other information related to the "action".
 - ii. Conduct and control the defence of the indemnitee in such "action".

So long as the above conditions are met, legal fees incurred by the Insurer in the defence of that indemnitee, necessary litigation expenses incurred by the Insurer and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as Supplementary Payments. Notwithstanding the other provisions of this Form, such payments will not be deemed to be "compensatory damages" for "property damage" and will not reduce the coverage Amounts.

The Insurer's obligation to defend an Insured's indemnitee and to pay for legal fees and necessary litigation expenses as Supplementary Payments ends when:

- (a) The Insurer has used up the applicable coverage Amount in the payment of judgments or settlements, or
- (b) The conditions set forth above, or the terms of the agreement described in the preceding Paragraph f., are no longer met.

5. WHO IS AN INSURED

- A. a. If the Insured named on the declarations page is an individual, that individual is an Insured, but only with respect to the conduct of a business of which that individual is the sole owner.
- b. If the Insured named on the declarations page is a limited liability company, that limited liability company is an Insured.
- c. If the Insured named on the declarations page is an organization other than a partnership, limited liability partnership, joint venture or limited liability company:
 - (1) organization's "executive officers" and directors.
 - (2) The "executive officers" and directors of the organization are Insureds, but only with respect to their duties as the organization's "executive officers" and directors.
- B. Any organization acquired or formed during the policy period by the Insured named on the declarations page is an Insured, but only if:
 - a. That named Insured maintains majority control or interest over such acquired or formed organization, and
 - b. There is no other similar insurance available to such acquired or formed organization.

Coverage under this provision is afforded only until the earlier of:

- (1) The 90th day after the acquisition or formation of that organization, or
- (2) The end of the policy period.

Coverage under this provision does not apply to "property damage" that occurred before that organization was acquired or formed.

6. EXCLUSIONS

This Form does not apply to:

- A. "Property 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. Animals, fish or birds. This exclusion does not apply to loss or damage caused directly by "named perils" or by theft or attempted theft.
- c. "Money", "cash cards", bullion, platinum and other precious metals and alloys, "securities" or current postage stamps.
- d. Furs, fur garments, jewels, jewellery, pearls, or precious stones. This exclusion does not apply to loss or damage caused directly by "named perils".
- e. Property while waterborne, except while on a regular ferry or railway car transfer in connection with land transportation.
- f. Property illegally acquired, kept, stored or transported, or that is seized or confiscated for breach of any law or by order of any public authority.
- g. Property owned or used by or rented, leased or loaned to the Insured.
- h. Paintings, statuary and other works of art or fine arts, except against absolute and total loss of species.
- i. Tobacco (other than raw unprocessed tobacco), tobacco products, alcohol or alcoholic beverages, unless such coverage is specifically endorsed on this policy. This exclusion does not apply to wine or beer while transported in bulk liquid form.
- j. Automobiles

B. "Property damage" caused directly or indirectly:

- a. By any dishonest or criminal act on the part of the Insured or agents of the Insured, other than "employees".
- b. By explosion (except explosion of natural, coal, or manufactured gas), collapse, rupture, bursting, cracking, burning out or bulging of the following property owned, operated or controlled by the Insured:
 - (1) 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.
 - (2) Piping and apparatus or their parts normally containing steam or water under steam pressure from an external source and while under such pressure.
 - (3) Other vessels and apparatus and their 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. This exclusion does not apply to "property damage" resulting directly from the explosion of manually portable gas cylinders or of tanks having an internal diameter of 610 millimetres (24 inches) or less used for the heating and storage of hot water for domestic use.
 - (4) Moving or rotating machinery or its parts.
 - (5) Any vessels and apparatus and their connected pipes while undergoing pressure tests, but this exclusion does not apply to other insured property that has been damaged by such explosion.
 - (6) Gas turbines.

This exclusion b. does not apply to loss or damage caused by resultant fire.

- c. 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:
 - (1) If the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is directly caused by a peril not otherwise excluded in this Form, or
 - (2) To loss or damage caused directly by a resultant peril not otherwise excluded in this Form.
- d. By or resulting from:
 - (1) "drug operations"
 - (2) Any activity or decision of a government agency or other entity to prevent, respond to or terminate illegal "drug operations", where the Insured or any agent of the Insured knew or ought to have known of the illegal "drug operations" prior to the "property damage". Unless the Insured or any agent of the Insured already knows that "property damage" has occurred, this exclusion does not apply if, upon becoming aware of illegal "drug operations", the Insured or any agent of the Insured immediately notifies the police and the Insurer.
- e. By interruption to the supply of "services" to the "premises", unless directly caused by physical loss of or damage to property at the "premises".
- f. By "logistical errors or omissions".
- g. For which the insured is obligated to pay "compensatory damages" by reason of the assumption of liability in a contract or agreement.

This exclusion does not apply to liability for "compensatory damages":

- (1) That the insured would have in the absence of the contract or agreement, or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable legal fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be "compensatory damages" because of "property damage", provided:
 - i. Liability to such party for, or for the cost of, that party's defence has also been assumed in the same "insured contract", and
 - ii. Such legal fees and litigation expenses are for defence of that party against a civil or alternative dispute resolution proceeding in which "compensatory damages" to which this insurance applies are alleged.
- h. By inappropriate or deficient packing or rough handling.
- i. In whole or in part by earthquake. 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, except for loss or damage caused directly by resultant fire, explosion, smoke or leakage from "fire protective equipment", all as described in clause 12 N. This exclusion does not apply to property in transit.

- j. In whole or in part by flood, including "surface water", waves, tides, tidal waves, tsunamis, or the breaking out or overflow of any natural or artificial body of water. 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, except for loss or damage caused directly by resultant fire, explosion, smoke or leakage from "fire protective equipment", all as described in clause 12 N. This exclusion does not apply to property in transit or loss or damage caused directly by leakage from a water main.
- k. By extremes of temperature or change in temperature, including but not limited to change in temperature resulting from the breakdown, failure or inefficient operation of any refrigeration, cooling or heating apparatus (including connections and supply pipes), unless such coverage is specifically endorsed on this Form.
- l. 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 loss or damage;
- m. By:
 - (1) 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;
 - (2) by contamination by radioactive material.

7. EXTENSIONS

The following extension is applicable to Coverage 2 E – Warehouseman's Transit. Coverage under this extension is subject to all terms and conditions of this Form. This extension does not apply if coverage is more specifically and separately insured elsewhere in this Form. Amounts payable under this extension are included in and are not in addition to the amount of insurance specified in the declarations for coverage 2E. This Form also insures:

- A. Expenses necessarily incurred by the Insured in the removal of debris of movable property of others because of loss or damage insured by this Form.

8. PROPERTY PROTECTION SYSTEMS

It is a condition of this insurance 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. "Fire protective equipment",
- B. Fire detection system,
- C. Intrusion detection system,
- D. Robbery alarm system,
- E. Vehicle anti-theft or tracking device,
- F. Refrigeration temperature alarm or refrigerant escape alarm.

The Insured 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. Failure by the Insured to comply with this condition shall invalidate coverage for "property damage" that would have been avoided or reduced if the interruption, flaw, defect, cancellation or non-renewal had not happened.

9. LOCKED VEHICLE REQUIREMENT

It is a condition of this insurance that any vehicle in which the movable property of others is carried is equipped with a fully enclosed body or compartment, and the Insurer shall be liable in case of loss by theft from an unattended vehicle only as a direct result of forcible entry (of which there shall be visible evidence) into such body or compartment, the doors of which are securely locked and the windows closed. This requirement does not apply to the theft of the movable property of others secured to a flatbed trailer.

10. STORAGE CONTRACT REQUIREMENT

All property accepted for storage by the Insured shall be subject to the terms and conditions of the Insured's Standard Warehouse Receipt, which must be signed by the customer or the customer's authorized representative upon delivery of the property to the Insured or as soon afterwards as practicable. The Warehouse Receipt must comply with the requirements of provincial or territorial legislation.

11. ADDITIONAL CONDITIONS NOT APPLICABLE TO THIS FORM

The following Additional Conditions in form G003 – Commercial Property Policy Conditions (All Provinces Except Quebec) are not applicable to this Form:

- A. Additional Condition II. - No Benefit to Bailee.
- B. Additional Condition III. - Pair and Set.
- C. Additional Condition IV. - Parts.

12. DEFINITIONS

Whenever used in this Form:

- A. "Action"** means a civil proceeding in which "compensatory damages" because of "property damage" to which this insurance applies is alleged. "Action" includes:
 - a. An arbitration proceeding in which such "compensatory damages" are claimed and to which the Insured must submit or does submit with the Insurer's consent.
 - b. Any other alternative dispute resolution proceeding in which such "compensatory damages" are claimed and to which the Insured submits with the Insurer's consent.
- 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. "Compensatory damages"** means damages due or awarded in payment for physical and concomitant economic loss. "Compensatory damages" does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.

- E. **"Coverage territory"** means Canada and the continental United States of America.
- F. **"Data"** means representations of information or concepts, in any form.
- G. **"Drug operations"** means cultivating, harvesting, processing, manufacturing, distributing or selling of any substance falling within the Controlled Drugs and Substances Act on the "premises".
- H. **"Employee"** includes:
- a. A person leased to the Insured by a labour leasing firm under an agreement between the Insured and the labour leasing firm, to perform duties related to the conduct of the Insured's business.
 - b. A person who is a substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.
- I. **"Executive officer"** means a person holding any of the officer positions created by the Insured's charter, constitution, by-laws or any other similar governing document.
- J. **"Fire protective equipment"** includes tanks, watermain, hydrants, valves and any other apparatus whether used solely for fire protection or jointly for fire protection and for other purposes. It does not include:
- a. Branch piping from a joint system where such branches are used entirely for purposes other than fire protection.
 - b. Any watermain or appurtenances located outside of the "premises" and forming a part of the public water distribution system.
 - c. Any pond or reservoir in which the water is impounded by a dam.
- K. **"Insured contract"** means that part of any contract or agreement pertaining to the Insured's business under which the Insured assumes the tort liability of another party to pay for "compensatory damages" because of "property damage" to a third person or organization, provided the "property damage" is caused, in whole or in part, by the Insured or by those acting on the Insured's behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- L. **"Logistical errors or omissions"** means errors or omissions in the following types of work performed by or on behalf of the Insured with respect to the movable property of others:
- a. Arranging transportation.
 - b. Control and management of inventory.
 - c. Extraction of containers from a larger container in which they arrived at the "premises".
 - d. Labelling or relabeling.
 - e. Marking or ticketing with prices.
 - f. Packaging or repackaging.
 - g. Taking, recording and fulfilling orders.
- M. **"Money"** means bank notes and coins.

N. "Named perils" means, except as excluded in clause 6:

- a. Fire.
- b. Lightning.
- c. Explosion of natural, coal, or manufactured gas.
- d. Impact by aircraft, spacecraft or land vehicle or by articles dropped from them. No coverage is provided for:
 - (1) Cumulative "property damage".
 - (2) "Property damage" to aircraft, spacecraft or land vehicles that cause the "property damage" to other property.
 - (3) "Property damage" caused by land vehicles belonging to or under the control of the Insured or the Insured's "employees".
- e. Riot, vandalism and malicious acts. The term Riot includes open assemblies of strikers inside or outside the "premises" who have quitted work and of locked-out "employees". No coverage is provided for "property damage" caused by:
 - (1) Cessation of work, interruption to business operations or changes in temperature.
 - (2) Theft or attempted theft.
- f. Smoke due to a sudden, unusual and faulty operation of any stationary furnace.
- g. Leakage from "fire protective equipment", consisting of:
 - (1) the leakage or discharge of water or other substances from,
 - (2) the collapse of, or
 - (3) the rupture due to freezing of
 "fire protective equipment" for the "premises" or for adjoining structures.
- h. Windstorm or hail. No coverage is provided for snow-load, ice-load, tidal wave, high water, overflow, flood, waterborne objects, waves, ice, land subsidence or landslide.

O. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

P. "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.

Q. "Premises" means the entire area within the property lines and areas under adjoining sidewalks and driveways at:

- a. Each Specified Location,
- b. Each Unspecified Location, if covered by this Form,
- c. Each Acquired Location, if covered by this Form,

and in or on land vehicles within 100 metres (328 feet) of such locations.

R. "Property damage" means

- a. Physical injury to tangible property from an external cause, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.
- b. Loss of use of tangible property that is not physically injured from an external cause. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "data" is not tangible property.

S. "Securities" means negotiable and non-negotiable instruments other than "cash cards" and "money".

T. "Services" means electricity, water, gas or steam.

U. "Surface water" means water or natural precipitation temporarily diffused over the surface of the ground.