

## **Equipment Breakdown Course of Construction - Business Interruption – Delayed Start-up (Actual Loss Sustained) Endorsement – BM52**

---

**WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN THE DEFINITIONS SECTION OF THIS FORM & BM51 (to which this Form attaches).**

### **1. INSURING AGREEMENT**

In consideration of the Premium charged, the Insurer hereby agrees, with respect to the “Business” at the insured location(s), that if during the period while this Form is in effect and if any “Equipment” insured under this Policy to which this endorsement is attached, shall sustain a “Breakdown” to “Equipment” installed in its permanent position, and the “Business” carried on by the Insured at the Premises sustains a “Delay of Completion” of the project, solely as a result of such “Breakdown”; the Insurer will pay to the Insured the amount of loss resulting from such interruption or interference in accordance with the provisions of this Form, provided that the liability of the Insurer under this Form shall in no case exceed the amount stated in the Declarations for this Form, and subject otherwise to the terms, conditions, provisions and definitions of the Policy BM51.

### **2. EXCLUSIONS**

The Insurer shall not be liable for payment for any “Actual Loss Sustained”:

- a)** Resulting from any loss to which any of the exclusions per BM51 apply;
- b)** For any time during which the Project would not or could not have been carried on if the “Breakdown” had not occurred;
- c)** Resulting from the failure of the Insured to use due diligence and dispatch and all reasonable means in order to complete the Project;
- d)** If, following a “Breakdown”, any fines or damages for breach of contract, non-completion of contracts or orders, or any penalties;
- e)** Resulting from delay of occupancy or use due to interference by strike, lockout, labour disturbance, riot or civil unrest with the transportation of property, construction of the project, the re-building, repairing or replacing of insured’s property or with the occupancy or use of the premises;
- f)** Resulting from alterations, additions, improvements, the rectification of defects or faults, or the elimination of any deficiencies carried out after the “Breakdown” occurred;
- g)** Resulting from any restrictions imposed by a Government or other Authority.

### 3. CONDITIONS

- a) **Measure of Recovery:** The insurance under this Form will pay the insured the “Actual Loss Sustained” which results from a total or partial prevention of “Business” and that amount of expense which is reasonably incurred by the insured to reduce or avert prevention of “Business”, but only to the extent that the total amount, that otherwise would have been paid under Indemnity Agreement of this form, is thereby reduced.
- b) **Indemnity Period:** The period beginning with the Commencement of Liability and ending not later than the number of months as specified in the Declarations as during which the results of the “Business” shall be affected solely by the “Breakdown”.
- c) **Limit of Liability:** If more than one Insured is named, the Insurer shall not be liable under this Form for any payment in excess of that for which it would have been liable if only one Insured had been named. The liability of the Insurer under this Form shall not be limited by the expiration of the Policy.

- d) **Commencement of Liability:** The commencement of the Insurer's liability under this Form shall be:

- (a) the “Anticipated Date of Completion” of the project; or

- (b) 24 (twenty-four) hours before the notice of the “Breakdown” is received by the Insurer, whichever is later.

If the time in effect at the address to which a notice is sent is different from that in effect at the Location where the “Breakdown” occurred, the time of the receipt of such notice, for the determination of the Commencement of Liability, shall be considered on the basis of the time in effect where the “Breakdown” occurred.

- e) **Waiting Period:** If a Waiting Period is specified in the Declarations for this Form, the Insurer shall not be liable for any loss and expense during any period prior to the specified day or hour after the Commencement of Liability as provided in Commencement of Liability.
- f) **Deductible:** If an amount is specified in the Declarations for this Form, such amount shall be deducted from the total amount of any loss and expense for which the Insurer is liable under this Coverage for any “Any One Breakdown”, and no liability shall exist for such amount deducted.
- g) **Reduction of Payment:** As soon as possible after a “Breakdown”, the Insured shall continue or resume “Business”, in whole or in part, and make up lost business, not to be limited to the period during which the “Business” is interrupted, and shall utilize every available means, including surplus machinery, duplicate parts, equipment, supplies and surplus or reserved stock, which may be owned, controlled or used by the Insured, which might reduce the amount for which the Insurer would otherwise be liable under this Form. The Insurer may take such means as will in the opinion of the Insurer reduce or avert any Delay of Completion of the Project or the interruption of the “Business” at the Location or supply the functions of the Premises in some other way.
- h) **Other Insurance:** If there is property insurance or any other insurance (except for equipment breakdown insurance) that applies to the same loss or damage as this Form; then this form will pay only for the amount of insured loss or damage that is in excess of the amount that applies from the property insurance or from the other insurance, whether collectible or not.  
If there is other equipment breakdown insurance that covers the same loss or damage as this policy, then this form will pay in the proportion that the applicable amount of insurance under this form bears to the limits of liability or amounts of insurance under the other equipment breakdown insurance.  
Nothing contained in this clause shall operate to increase the limits of liability or amounts of insurance under this form.

- i) **Liquidated Damages:** If any contract in respect of the Project contains a penalty clause providing for payment to the Principal or Project owner of any penalties, fines, liquidated damages or other similar payment for a "Delay of Completion" of the Project caused solely by a "Breakdown"; then any portion of such payment inuring to the benefit of the Principal or Project owner shall reduce the amount of loss that would otherwise be payable under this Coverage.
- j) **Limitation – Data & Media:** With respect to loss resulting from damage to or destruction of Media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including Data thereon, resulting from a "Breakdown", the length of time the Insurer shall be liable hereunder shall not exceed:
  - a) thirty (30) consecutive calendar days; or
  - b) the length of time that would be required to rebuild, repair or replace such insured property as has been damaged or destroyed by the "Breakdown";
 whichever is the greater length of time.
- k) **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 examine the Insured's books, records and such policies as relate to any insurance provided in this Form. Such examination shall not waive nor in any manner affect any of the terms or conditions of this Form.

#### 4. DEFINITIONS

- a. **DAY:** shall mean a period of 24 (twenty-four) consecutive hours, beginning at 12:01 a.m.
- b. **BUSINESS:**
  - i) If the word "Sales" is shown in the Declarations, "Business" shall mean the gross sales on the Premises.
  - ii) If the word "Rents" is shown in the Declarations, "Business" shall mean the rents collectible from the Premises.
  - iii) If the word "Income" is shown in the Declarations, "Business" shall mean the gross income estimated from the Premises.
  - iv) If the words "Gross rent" or "Rental value" is shown on the Declarations, "Business" shall mean the sum of the estimated total annual Gross Rent or Rental Value of the portions of the Project;
- c. **ACTUAL LOSS SUSTAINED:** shall mean the sum of:
  - i) Loss of "net profits" on the "Business" prevented, and
  - ii) That part of the following fixed charges and expenses which the "Business" did not earn because of a Breakdown, but which the "Business" would have earned had the "Breakdown" not occurred:
    - 1) Salaries and wages of officers, executives, employees under contract and other essential employees, pensions and directors' fees, but not including the Insured's "ordinary payroll" expense, and
    - 2) Administrative expenses and any other items contributing to the overhead expenses of the Insured.
- d. **EQUIPMENT:** The definition of "Equipment" as used in this Form shall be the definition in Form BM51.

- e. **BREAKDOWN:** The definition of "Breakdown" as used in this Form shall be the definition in Form BM51.
- f. **ANY ONE BREAKDOWN:** The definition of "Any One Breakdown" as the term is used in this Form shall be the definition of "Any One Breakdown" as specified in Form BM51.
- g. **ORDINARY PAYROLL:** means wages and salaries other than salaries of permanent staff and also means wages to foremen and important employees whose services would not be dispensed with should the project be interfered with or interrupted.
- h. **NET PROFIT:** means the net trading profit (exclusive of all capital receipts and accretions and all outlay properly chargeable to capital) resulting from the "business" of the insured at the insured premises after due provision has been made for all standing and other charges including depreciation, but before the deduction of any taxation chargeable on profits.
- i. **INDEMNITY PERIOD:** means the period beginning with the "Breakdown" insured against and ending no later than twelve (12) months after such "Breakdown", during which the results of the "Business" shall be affected in consequence of the destruction or damage by the "Breakdown". If however any media for (or programming records pertaining to) computers, electronic data processing or electronically controlled equipment are destroyed or damaged by the "Breakdown", then the "indemnity period" in respect to such destruction or damage shall not extend beyond:
  - (i) Thirty (30) consecutive days after the "Breakdown" of such destruction or damage; or
  - (ii) The date upon which insurance ceases under this form for loss arising from other property destroyed or damaged by the same "Breakdown";

Whichever period of time is the shorter.
- j) **ANTICIPATED DATE OF COMPLETION:** shall mean:
  - (1) the expiration of the Policy Period as shown in the Declarations; or
  - (2) any revised date upon which the Project would have been completed had the "Breakdown" not occurred.
- k) **DELAY OF COMPLETION:** shall mean the time period between the Anticipated Date of Completion and the actual date of completion of the project, less any time resulting from delay caused by loss, damage or events for which the Insurer is not liable under this policy, but in no event exceeding the "Indemnity Period".
- l) **GENERAL:** Except as provided by this Endorsement, all terms, conditions, exclusions, provisions and definitions of the policy and of any schedule or Endorsement forming a part thereof, shall govern the insurance coverage provided by this Endorsement.