

COMMERCIAL GENERAL LIABILITY COVERAGE

LIMITED POLLUTION LIABILITY – UNDERGROUND STORAGE TANKS

This Endorsement Changes the Policy. Please Read It Carefully.

Certain words and phrases in bold font have special meaning as defined below or in the Form to which this Endorsement is attached.

The titles of sections or paragraphs listed below should not be considered for purposes of interpreting the intent of this Form; these titles have only been inserted for ease of reading.

This Endorsement is attached to the Commercial General Liability Max Form and is subject to all terms, conditions, limitations and exclusions of such Form.

1. Sub-paragraph 4.1. in Exclusion 4. POLLUTION under **COMMON EXCLUSIONS – COVERAGES A, B, C and D** in the Commercial General Liability Max Form, is deleted and replaced by the following:

This insurance does not apply to:

4. POLLUTION

- 4.1. **Bodily injury, property damage or personal injury** arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**:
- 4.1.1. At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any Insured. However, this sub-paragraph does not apply to:
- 4.1.1.1. **Bodily injury** if sustained within a building and caused by smoke, fumes, vapour or soot from equipment used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
- 4.1.1.2. **Bodily injury or property damage** for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional Insured with respect to your ongoing operations performed for that additional Insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any Insured, other than that additional Insured;
- 4.1.1.3. **Bodily injury or property damage** arising out of heat, smoke or fumes from, or fire extinguishing substances used to fight, a **hostile fire**; or
- 4.1.1.4. **Bodily injury or property damage** arising out of any **pollution incident** from underground storage tanks owned, or rented to or for which the Insured may be legally responsible at a location described in the Declaration Page(s) in Canada only.

2. LIMITS OF INSURANCE

- 2.1. The Limits of Insurance shown in the Declaration Page(s) for this Endorsement, subject to the rules below, are the most we will pay regardless of the number of:
- 2.1.1. Insureds;
- 2.1.2. Claims made or **actions** brought; or
- 2.1.3. Persons or organizations making claims or bringing **actions**.
- 2.2. The Each Claim limit is the most we will pay under this Endorsement for the sum of all **compensatory damages** and **defence costs** arising out of any one claim.
- 2.3. The Aggregate limit is the most we will pay under this Endorsement for the sum of **compensatory damages** and **defence costs** in any one **policy period**, except in the province of Quebec, **defence costs** are payable in addition to the Aggregate Limit Multiple claims arising out of or related to one **pollution incident** shall be treated as one claim that is subject to one Each Claim Limit.
- 2.4. The Aggregate Limit applies separately to each consecutive **policy period** and to any remaining period of less than twelve (12) months, starting with the beginning of the **policy period** shown in the Declaration Page(s), unless the **policy period** is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance.

3. DEDUCTIBLE

- 3.1. Our obligation to pay **compensatory damages** for **bodily injury** or **property damage** applies only to the amount of **compensatory damages** in excess of the deductible amount stated in the Declaration Page(s). The Limit of Insurance applicable to each **pollution incident** will be reduced by the amount of such deductible.
- 3.2. The deductible amount applies:
- 3.2.1. To all **compensatory damages** because of **bodily injury** or **property damage** sustained by any one person or organization as the result of any one **pollution incident**; or
- 3.2.2. If more than one claim arises out of the same **pollution incident**, to each claimant separately, if so stated in the Declaration Page(s).
- 3.3. The terms of insurance, including those with respect to:
- 3.3.1. Our right and duty to defend any **action** seeking those **compensatory damages**; and
- 3.3.2. Your duties in the event of an **occurrence**, claim or **action**;
- apply irrespective of the application of the deductible amount.
- 3.4. We 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, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

4. SPECIAL CONDITIONS

- 4.1. We have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under **defence costs**.
- 4.2. Any claim made subsequent to the **policy period** for which notice was given to us during the **policy period**, shall be deemed a claim made during the **policy period**.
- 4.3. We will have the right and duty to defend any **action** seeking those **compensatory damages** but:

4.3.1. The amount we will pay for **compensatory damages** and **defence costs** is limited as described in **Section III – LIMITS OF INSURANCE AND DEDUCTIBLES**; and

4.3.2. We may investigate and settle any claim or **action** at our discretion; and

4.3.3. Our right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments or settlements and **defence costs**.

4.4. **Property damage**, that is loss of use of tangible property that is not physically injured, shall be deemed to occur at the time of the **pollution incident** that caused it.

4.5. A claim by a person or organization seeking **compensatory damages** will be deemed to have been made when notice of such claim is received and recorded by any Insured or by us, whichever comes first.

5. DEFINITIONS

5.1. For the purpose of this Endorsement:

5.1.1. **Defence costs** means payments allocated to a specific claim or **action** for its investigation, settlement, or defence, including:

5.1.1.1. Counsel fees and all other litigation expenses;

5.1.1.2. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. The Insurer does not furnish these bonds;

5.1.1.3. Costs taxed against you in the **action**; and

5.1.1.4. Interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of **SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLES**.

Defence costs do not include:

5.1.1.5. Salaries and expenses of our employees or your **employees**, other than that portion of the our employed counsel's fees, salaries and expenses allocated to a specific claim or **action**; or

5.1.1.6. Fees and expenses of independent adjusters hired by us.

5.1.2. **Pollution Incident** means an unexpected and unintentional spill, discharge, emission, dispersal, release or escape of any **pollutants**. In addition, such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of any **pollutants** arising from a sudden and accidental discharge from an underground storage tank must not occur in a quantity or with a quality that is routine or usual to the business of the Insured.

The entirety of any spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants** which arises out of a continuous or repeated exposure to substantially the same conditions shall be deemed to be one **pollution incident**.

5.2. For the purpose of this Endorsement, Paragraph 28. under **SECTION IV – DEFINITIONS** in the Commercial General Liability Max Form is deleted and replaced by the following:

28. Property damage means:

28.1. Physical injury to tangible property, 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; or

28.2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **pollution incident** that caused it.

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

All other terms and conditions of the Policy remain unchanged.