

## COMMERCIAL GENERAL LIABILITY COVERAGE

# CONCRETE RIP AND TEAR LIABILITY ENDORSEMENT

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. INSURING AGREEMENT

- 1.1. We will pay those sums that the Insured becomes legally obligated to pay as expenses that are the direct and necessary result of the determination that during the **policy period, your product** (incorporated in a structure or work) failed to meet the applicable structural specifications relating to strength or durability; and when expenses have been incurred for:
  - 1.1.1. the necessary dismantling, removal or breaking up of any structure or works (including debris removal from the site) in which **your products** have been incorporated, including the expense of rebuilding, replacing or reforming or reassembling necessary to restore the structure or work to the same state of progress which existed immediately before the determination that **your products** were faulty; or
  - 1.1.2. remedial steps or modification to the deficient structure or work to correct it to the satisfaction of all concerned and as may be approved by professional engineer or architect;whichever comprises the lesser expense sums.
- 1.2. Before giving rise to an obligation on us under this Insuring Agreement, any determination that incorporated products failed to meet the applicable structural specifications relating to strength or durability must be confirmed by tests performed prior to dismantling, removal or breaking up, by a qualified person, other than an Insured, as designated by us.

### 2. LIMITS OF INSURANCE

- 2.1. The Limit of Insurance - Each Claim shown in the Declaration Page(s) is the most we will pay for expenses under this Endorsement, including expenses and damages, cost of investigation and legal defence costs, costs taxed against us and interest before and after entry of judgement and any other payments paid or payable under the **SUPPLEMENTARY PAYMENTS – COVERAGE A, B and D** section of the Commercial General Liability Max Form, arising out of each claim under this Endorsement.
- 2.2. All damages, losses or expenses arising out of a lot or batch or series of lots or batches prepared, acquired or distributed by the Insured to one customer shall be considered as one claim under this Endorsement.
- 2.3. The Limit of Insurance - Annual Aggregate shown in the Declaration Page(s) is the most we will pay for the sum of all claims under this Endorsement during any **policy period** of twelve (12) months terminating on an anniversary of the inception date of the Policy. For the purpose of this sub-paragraph a claim shall be deemed to occur on the last date the allegedly defective product is delivered to the job site.

### 3. ADDITIONAL EXCLUSIONS

This insurance does not apply to:

- 3.1. A fine or penalty for which the Insured may be liable for the breach of or failure to comply with any provision of the applicable building codes or similar legislation applicable to your operations of the Insured or any penalty for breach of contract.
- 3.2. The legal liability of the Insured for **bodily injury or property damage**.
- 3.3. Physical or chemical changes in **your products** made intentionally by or at the direction of any person not authorize to do so during delivery or after arrival at the job site, but this Exclusion 3.3. shall not apply to the addition of water to a mixture at the job site provided it is done in the presence of and with the concurrence of an **employee** of the Insured.
- 3.4. The cost, value or expense of **your products** that fail to meet the applicable specifications relating to strength or durability.
- 3.5. Failure of **your products** delivered prior to the commencement of the coverage under this Endorsement, if the Insured knew or could reasonably have foreseen that the products might be defective at the time coverage commenced.
- 3.6. **Your products** in any well, hole, mine, formation, strata or area beneath the earth's surface in or through which exploration for, storage of, or production of any substance (including but not limited to coal, oil, gas, minerals or water and including any legal or equitable interest therein) is or will at any time be conducted.
- 3.7. Asbestos – see Common Exclusions.
- 3.8. Fungi or Spores – see Common Exclusions.
- 3.9. Nuclear Energy Liability – see Common Exclusions.
- 3.10. Pollution – see Common Exclusions.
- 3.11. Terrorism – see Common Exclusions.
- 3.12. War Risks – see Common Exclusions.
- 3.13. Unsolicited Communication – see Common Exclusions.

### 4. SUPPLEMENTARY PAYMENTS

**SUPPLEMENTARY PAYMENTS – COVERAGE A, B and D** section in the Commercial General Liability Max Form is extended to apply to this Endorsement except that the Paragraph 1. is deleted and replaced with the following:

1. We will pay, with respect to any claim we investigate or settle, or any **action** against an Insured we defend:
  - 1.1. All expenses we incur;
  - 1.2. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds;
  - 1.3. All costs to protect you against any levy of execution arising from a judgment;

- 1.4. All reasonable expenses you incur at our request to assist us in the investigation or defence of the claim or **action**, including actual loss of earnings because of time off from work;
- 1.5. All costs assessed or awarded against you in the **action**;
- 1.6. Any interest accruing after entry of judgment upon that part of the judgment which is within the applicable limit of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

If we are prevented by law or otherwise from defending the Insured, we will reimburse the Insured for defence costs and expenses that are incurred with our consent. The amounts so incurred shall be considered to be payments made or required to be made by us pursuant to this Endorsement and shall be payable subject to the Limit of Insurance provided in Paragraph 2. **LIMITS OF INSURANCE** of this Endorsement.

#### 5. COVERAGE PERIOD

- 5.1. The coverage provided by this Endorsement applies to expenses incurred as a result of product failure determinations which take place during the **policy period** or in any written extension thereof under any renewal certificate issued by or for us but only to those expenses which arise from products delivered by you during such **policy period** or extension or within thirty (30) days immediately preceding the effective date of this Endorsement.  
Furthermore, coverage shall only apply where the failure of **your products** to meet the applicable structural specifications is discovered and the potential claim reported to us within six (6) months of the last date of delivery of the allegedly defective products to the job site;
- 5.2. If this Policy is cancelled or not renewed by us except for the non-payment of premium and if you pay an additional premium equal to ONE-HALF of the last applicable annual Rip and Tear Liability premium charge, within thirty (30) days following the expiry date of the Policy, then such insurance as is afforded by this Endorsement shall apply to product failure determinations first made and reported to the Insurer within six (6) months of the expiry date of the Policy.

This Clause shall not increase the Limits of Insurance under the Policy or extend the **policy period**.

#### 6. SPECIAL CONDITION

In the event of an **occurrence** for which indemnity is afforded by this Endorsement, the Insured will, if so requested by us, replace the defective products or make the necessary repairs as are within your business capabilities, at the actual cost to the Insured.

#### 7. TERRITORY

The coverage provided by this Endorsement applies only to claims arising out of products delivered to job sites in Canada.

#### 8. REIMBURSEMENT CLAUSE

- 8.1. The Insured will reimburse us, up to the amount specified in the Declaration Page(s) as Reimbursement, with respect to any amount paid by us for expenses and damages, investigations costs, legal defence costs, costs taxed against us and interest and any other payments paid or payable under the **SUPPLEMENTARY PAYMENTS – COVERAGE A, B and D** section of the Commercial General Liability Max Form, on any claim (hereinafter called claim payments) and we will only be liable for claim payments that exceed the reimbursement amount, subject always to the applicable limit of liability as stated in Paragraph 2. **LIMITS OF INSURANCE** of this Endorsement..
- 8.2. All other terms of the Policy, including those with respect to our right to investigate, negotiate, and settle any claim or **action**, apply irrespective of the application of the Reimbursement Clause.
- 8.3. We may pay all or any part or all of the amount to be reimbursed to effect settlement of any claim or **action** and, upon notification of the action taken, the Insured shall promptly reimburse us for the amount paid for which the Insured is liable pursuant to the preceding paragraphs.

#### 9. DEFINITIONS

Paragraph 35. **Your product** in **SECTION IV - DEFINITIONS** of the Commercial General Liability Max Form is deleted and replaced with the following:

##### 35. **Your product**

- 35.1. Means:
  - 35.1.1. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - 35.1.1.1. You or on Your behalf;
    - 35.1.1.2. Others trading under the Insured's name; or
    - 35.1.1.3. A person or organization whose business or assets you have acquired; and
  - 35.1.2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- 35.2. Includes:
  - 35.2.1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**;
  - 35.2.2. The providing of or failure to provide warnings or instructions;
  - 35.2.3. Poured Concrete;
  - 35.2.4. Concrete Block;
  - 35.2.5. Cement;
  - 35.2.6. Mortar;
  - 35.2.7. Sand;
  - 35.2.8. Gravel;
  - 35.2.9. Reinforcing Steel Bars;
  - 35.2.10. Precast or Prestressed Concrete;
  - 35.2.11. Brick; and
  - 35.2.12. Similar construction products.
- 35.3. Does not include vending machines or other property rented to or located for the use of others but not sold.

**All other terms and conditions of the Policy remain unchanged.**