

COMMERCIAL GENERAL LIABILITY MAX

LIMITED COVERAGE FOR FAILURE OF PRODUCT OR WORK TO MEET WRITTEN SPECIFICATIONS

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

We will pay those sums that the Insured becomes legally obligated to pay as **compensatory damages** because of an **error** made by the Insured to manufacture goods or products according to the **written specifications** of the person or organization to whom such manufactured goods or products are sold by you only if:

- 1.1. The **error** takes place in the **coverage territory**; and
- 1.2. The **error** occurs during the **policy period**; and
- 1.3. Prior to the **policy period**, no Insured listed under Paragraph 1. of SECTION II — WHO IS AN INSURED of the Commercial General Liability Max form and no **employee** authorized by you to give or receive notice of an **occurrence** or claim, knew that the **error** had occurred.

2. LIMIT OF INSURANCE

- 2.1. The Limits of Insurance shown in the Declaration Page(s), subject to the rules below, are the most we will pay regardless of the number of claims made or **actions** brought.
- 2.2. All claims expenses shall be first subtracted from the Limit of Insurance with the remainder, if any, being the amount available to pay **compensatory damages**. If the Limit of Insurance under this Endorsement is exhausted prior to settlement or judgment of any pending claim or action, we shall have the right to withdraw from the further investigation of defence thereof by tendering control of such investigation or defence to the Insured.

3. DEDUCTIBLE

Our obligation to pay **compensatory damages** on the Insured's behalf applies only to the amount of **compensatory damages** in excess the deductible amount shown in the Declaration Page(s) for the Endorsement. The deductible amount shall be applicable to each claim or action containing allegations of any **error**.

4. EXCLUSIONS

This insurance does not apply to:

- 4.1. Any claim arising out of or relating to **bodily injury, personal injury or advertising injury**;
 - 4.2. Any claim arising out of or relating to **property damage** unless otherwise covered by this Endorsement. This exclusion does not apply to loss of use of tangible property that is not physically damaged if the loss of use results from the failure of **your product or your work** to meet the **written specifications**;
 - 4.3. Any claim arising out of **written specifications** that were not provided by the person or organization to whom the manufactured goods or products are sold by you;
 - 4.4. Any claim arising out of any defect, deficiency or mistake in such **written specifications**;
 - 4.5. Any claims for costs or expenses incurred by any Insured for the repair or replacement of defective materials or workmanship in **your work**;
 - 4.6. Any claim for an amount in excess of the cost for repair or replacement of **your product or your work** or the price at which **your product or your work** was sold to the customer, whichever is less;
 - 4.7. Any claim arising out of or relating to cost guarantees, cost estimates or estimates of probable costs being exceeded;
 - 4.8. Any claim for the return of all or any part of payments made to you by your customers for **your product or your work**;
 - 4.9. Any liability assumed by any Insured under any written or verbal contract or agreement. This exclusion does not apply to a representation or warranty that **your product or your work** will substantially conform to the **written specifications**;
 - 4.10. Any loss, cost or expense incurred by you or others arising out of or relating to the withdrawal or recall **your product or your work**, if such work or product or property is withdrawn or recalled from the market or from use by any person or organization because of a known defect, deficiency, inadequacy or dangerous condition in it;
 - 4.11. Any liability for fines, penalties, punitive or exemplary damages;
 - 4.12. Any dishonest, fraudulent, criminal or malicious act by or on behalf of any Insured or any person or organization for which the Insured is legally responsible;
 - 4.13. Any **error** that occurred prior to the effective date of this Endorsement if any Insured at the effective date knew or could have reasonably foreseen that such an **error** might result in a claim or **action**;
 - 4.14. Any **error** expected or intended by any Insured;
 - 4.15. Any claim resulting from the actual or alleged violation of any anti-trust, restraint of trade, unfair trade practice, securities or other consumer protection law by an Insured;
 - 4.16. Any **error** related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including but not limited to damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity;
- This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**;

- 4.17.
- 4.17.1. Any **error** or any other cost, loss or expense incurred by others, arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any **fungi** or **spores** however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of **fungi** or **spores**;
- 4.17.2. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with sub-paragraph 4.17.1. above; or
- 4.17.3. Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such **error** referred to in sub-paragraph 4.17.1. or 4.17.2. above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

- 4.18.
- 4.18.1. Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;
- 4.18.2. Any **error** with respect to which an Insured under this Endorsement is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability;
- 4.18.3. Any **error** resulting directly or indirectly from the **nuclear energy hazard** arising from:
- 4.18.3.1. The ownership, maintenance, operation or use of a **nuclear facility** by or on behalf of an Insured;
- 4.18.3.2. The furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**;
- 4.18.3.3. The possession, consumption, use, handling, disposal or transportation of **fissionable substances**, or of other **radioactive material** (except radioactive isotopes, away from a **nuclear facility**, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

- 4.19.
- 4.19.1. Any **error** which would have not occurred in whole or part but for the actual, alleged, potential or threatened spill, discharge, permission dispersal, seepage, leakage, migration, release or escape of **pollutants** at any time;
- 4.19.2. Any fines or penalties assessed against or imposed upon any Insured arising out of the actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**;
- 4.19.3. Any loss, cost or expense arising out of any:
- 4.19.3.1. Request, demand or order or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize, or in any way respond to, or assess the effects of **pollutants**, or
- 4.19.3.2. Claim or **action** by or on behalf of a government authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.
- 4.20. Any **error** due to the rendering of or failure to render by you or on your behalf of any **professional services** for others, or any error or omission, malpractice or mistake in providing those services. This exclusion does not apply to coverage provided by this Endorsement because of an **error** committed in the course of your **business operations** to which this insurance applies;
- 4.21. Any **error** 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 **error**;
- 4.22. Any **error** arising directly or indirectly, in whole or in part, out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.
- This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

5. DEFINITIONS

For the purpose of this Endorsement:

- 5.1. **Business operations** means your operations described in the Declaration Page(s).
- 5.2. **Error** means any error, omission or negligent act by or on behalf of any Insured which results in the failure of **your product** or **your work** to meet the specifications described in **written specifications**, after final acceptance of **your product** or **your work** by your customer.
- 5.3. **Written specifications** means stipulations in writing (including design specifications supplied to you by your customer) as to the durability, fitness, quality or performance of your products purchased from you.

All other terms and conditions of the Policy remain unchanged.