

Motor Truck Cargo Legal Liability - MC01

WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN THE DEFINITIONS SECTION OF THIS FORM.

Intact Insurance Company (HEREINAFTER CALLED THE INSURER)

agrees with the "Insured", named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limit of liability, insuring agreements, exclusions, conditions and other terms of this Policy:

SECTION I - INSURING AGREEMENTS

I. COVERAGE CLAUSES

To pay on behalf of the "Insured" all sums which the "Insured" shall be legally obligated to pay, including contractual obligations, against all risks of "Direct Physical Loss or Damage", except as hereinafter provided, to the "Property of Others" while in the care, custody and control of the "Insured",

II. OCCURRENCE BASIS, POLICY PERIOD, TERRITORY

This Policy applies to "occurrences", which take place during the policy period anywhere in Canada, the Continental United States or upon a vessel plying between ports of those countries.

III. COVERAGE EXTENSIONS

This Policy extends to cover the legal liability of the "Insured" for the following but only those items for which an amount of insurance is specified on the Declaration Page(s) and only for the limit specified therein:

1. **Contingent Liability:** The contingent liability of the "Insured" for loss or damage to "Property of Others" while in due course of transit in the custody of any other land carrier to whom the property is transferred or transhipped by the "Insured". It being the intent of this clause to protect the "Insured" in the event that the other carrier fails to indemnify the owner of the goods and the "Insured" is held liable for such loss or damage.
2. **Debris Removal Expense:** The expenses necessarily incurred by the "Insured" in the removal of the debris of the property insured, including fire department charges, occasioned by loss or damage not otherwise excluded hereunder.
3. **Freight Charges:** Freight Charges due the "Insured" for transporting the property if such charges are rendered uncollectible as a direct result of loss or damage to the property insured and not otherwise excluded by this policy.
4. **Uninsured property,** being the equipment of the "Insured" or of others, that is used to secure the "Property of Others" while the "Vehicle(s)" is in transit, provided such property is lost or damaged as a result of loss or damage to "Property of Others" and not otherwise excluded by this form. For the purposes of this extension, uninsured property shall include tarpaulins, chains, straps and fittings and other similar property used to secure the cargo.

This form also extends to cover:

5. Reloading Expenses: The expenses necessarily incurred by the "Insured" to reload "Property of Others" which has spilled, dislocated, been exposed to the weather, or immobilized, as a direct result of collision, upset, or overturn of the cargo carrying "Vehicle(s)"

This extension only applies when there has been no "Direct Physical Loss or Damage" to any "Property of Others".

The maximum liability of the Insurer under this extension shall not exceed \$15,000 in any one loss, casualty, or disaster.

Coverage Extensions 2. Debris Removal and 5. Reloading Expenses shall not apply to costs or expenses:

- (a) to "Clean Up" "Pollutants" from land or water; or
- (b) for testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened, spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "Pollutants".

SECTION II - EXCLUSIONS

THIS POLICY DOES NOT APPLY:

- 1) to loss, destruction or damage caused by civil commotion, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.
- 2) loss, destruction or damage caused directly or indirectly by misappropriation, secretion, conversion, infidelity or any dishonest act on the part of the "Insured" or any other party of interest, employees or agents of the "Insured", or any person or company to whom the property may be entrusted;
- 3) to loss or damage caused by delay, deterioration, loss of market or loss of use;
- 4) to loss or damage caused by latent defect, inherent vice, wear and tear;
- 5) to loss caused by unexplained or mysterious disappearance of property;
- 6) to loss or damage to property illegally acquired, kept, stored or transported; property illegally sold; or property seized or confiscated for breach of any law or by order of any public authority;
- 7) to loss or damage caused directly or indirectly by:
 - i. any nuclear incident as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any law amendatory thereof or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
 - ii. contamination by radioactive material;
- 8) to liability or expense 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 "Claim".
- 9)
 - (a) to loss of or damage to "Data"
 - (b) to loss or damage caused directly or indirectly by "Data problem". However, if loss or damage caused by "Data problem" results in the occurrence of further loss of or damage to insured property that is directly caused by fire, explosion, smoke or leakage from fire protective equipment, this exclusion shall not apply to such resulting loss or damage.
- 10)
 - (a) to loss or damage consisting of or caused directly or indirectly, in whole or in part, by any "fungi" or "spores" unless such "fungi" or "spores" are directly caused by or directly result from a peril otherwise insured and not otherwise excluded by this policy;
 - (b) the cost or expense for any testing, monitoring, evaluating or assessing of "fungi", or "spores".

SECTION III – DEFINITIONS

- a) "**Action(s)**" means a civil proceeding or demand against the "Insured" seeking damages to which this insurance applies and arising out of the "Insured's" operations as a motor carrier for transportation.
- b) "**Claim(s)**" means a demand against the "Insured" or the filing of a suit or the initiation of an arbitration proceeding naming the "Insured", seeking damages arising out of the "Insured's" operations as a motor truck carrier, or an

"occurrence" which the "Insured" has knowledge of which may result in a demand against the "Insured" seeking damages arising out of the "Insured's" operations as a motor carrier for transportation.

- c) **"Clean Up"** means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or remediation of "Pollutants", including testing which is integral to the aforementioned processes.
- d) **"Data"** means representations of information or concepts in electronic form.
- e) **"Data Problem"** means:
 - (i) erasure, destruction, corruption, misappropriation, misinterpretation of "Data";
 - (ii) error in creating, amending, entering, deleting or using "Data"; or
 - (iii) inability to receive, transmit or use "Data";
- f) **"Direct Physical Loss or Damage"** means, permanent deprivation or physical impairment or destruction, and shall not include loss for delay, loss of use, loss of market, or other economic or indirect loss of any kind.
- g) **"Fungi"** includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, bacteria or wet or dry rot, whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "Fungi" or "Spores" or resultant mycotoxins, allergens, or pathogens.
- h) **"Insured"** means, the individual, partnership, corporation or other entity named on the Declaration Page(s) and includes any partner, director, officer or employee thereof while acting within the scope of their employment duties as such.
- i) **"Occurrence(s)"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions giving rise to one or more claims that takes place during the Policy Period.
- j) **"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.
- k) **"Property of Others"** means lawful goods and merchandise accepted for shipment by the "Insured" under tariff, contract, bill of lading, shipping receipt or similar document.
- l) **"Spores"** includes, but is not limited to, one or more reproductive particles or microscopic fragments produced by, emitted from or arising out of any "fungi".
- m) **"Terrorism"** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.
- n) **"Vehicle(s)"** means licensed motor vehicle or trailer or semi-trailer or combination thereof in tandem.

SECTION IV - GENERAL PROVISIONS AND CONDITIONS

1. LIMITS OF INSURANCE

- a) The maximum liability of the Insurer in any one loss, casualty or disaster shall not exceed the Limit as stated on the Declaration Pages(s) regardless of the number of:
 - (i) "Insured(s)"; or
 - (ii) "Claims" made or "Actions" brought; or
 - (iii) Persons or organizations making "Claims" or bringing "Actions".
- b) The liability of the Insurer shall not exceed the limits of insurance specified on the Declaration Page(s) for any one "occurrence", in respect to:
 - (i) Contingent Liability;
 - (ii) Debris Removal Expense;
 - (iii) Freight Charges;
 - (iv) Uninsured Property

REINSTATEMENT OF LIMIT AFTER LOSS

Any loss hereunder shall not reduce the amount of insurance applicable to this Form, unless an aggregate limit per policy period is stated on the Declaration Page(s), or specially endorsed on this policy.

2. DEDUCTIBLE

Each claim for loss, damage or expense shall be adjusted separately, and from the amount of each such adjusted claim, the sum specified on the Declaration Page(s) shall be deducted.

3. NOTICE TO THE INSURER

Upon the happening of an occurrence involving coverage afforded herein written notice shall be given by or on behalf of the "Insured" to the Insurer as soon as reasonably possible.

If claim is made or suit is brought against the "Insured", the "Insured" shall immediately forward to the Insurer or any claims representative previously designated by the Insurer, every demand, notice, summons, or other process received by him or his representative.

4. ASSISTANCE AND COOPERATION

The "Insured" shall cooperate with the Insurer, and upon the Insurer's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits.

5. ASSUMPTION OF LIABILITY

The "Insured" shall not, except at his own cost, voluntarily make payment, or incur any expense other than to protect the "Property of Others" from further loss or damage.

6. ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgement against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Insurer. Every action or proceeding against the Insurer shall be commenced within one year of the date of such judgement or written agreement and not afterwards.

The sole venue for coverage legal action related to this Policy shall be a Superior Court in Canada.

Nothing contained in this Policy shall give any person or organization any right to join the Insurer as a codefendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Insurer of any of its obligations under this Policy.

7. OTHER INSURANCE

The Insurer shall not be liable if at the time of an accident or "occurrence" covered by this Policy there is any other insurance that would have attached if this insurance had not been effected, and this insurance shall specifically exclude losses covered by such other valid insurance. This insurance shall apply only as excess insurance and in no event as contributing insurance and then only after all such other insurance has been exhausted.

The Insurer acknowledges the existence of any Policies arranged to apply in excess of the insurance provided by this Policy and it is agreed that notwithstanding anything contained in this Condition the insurance provided by such excess Policies shall be considered as excess and non-contributing insurance insofar as the insurance provided under this Policy is concerned and shall be held to attach and cover only after the insurance under this Policy has been exhausted.

8. SUBROGATION:

The Insurer, upon making any payment or assuming liability for payment under this policy, is subrogated to all rights of recovery of the Insured against others, and may bring action in the name of the Insured to enforce such rights.

Where the net amount recovered, after deducting the costs of recovery, is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the Insurer and the Insured in the proportion in which the loss or damage has been borne by them respectively.

9. TERMINATION

(1) This contract may be terminated,

- a) by the Named Insured at any time on request
- b) by the Insurer giving to the Named Insured written notice of termination at least:
 - i) five (5) days before the effective date of termination if personally delivered;
 - ii) fifteen (15) days before the effective date of termination if the contract is terminated by registered mail for non-payment of premium; or
 - iii) thirty (30) days before the effective date of termination if the contract is terminated by registered mail for any other reason.

(2) When this contract is terminated by the Insurer,

- a) the Insurer shall refund the excess of premium actually paid by the Named Insured over the proportionate premium for the expired time, subject to any minimum retained premium specified; and
- b) the refund shall accompany the notice, unless the premium is subject to adjustment or determination as

to amount, in which case the refund shall be made as soon as practicable.

- (3) When this contract is terminated by the Named Insured, the Insurer shall refund as soon as practicable the excess of premium actually paid by the Named Insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
- (4) The refund may be made by money, postal or express company money order or cheque payable at par.
- (5) The fifteen (15) and thirty (30) days mentioned in clauses (1)(b)(ii) and (iii) of this condition commence to run on the day following the receipt of the registered letter at the post office to which it is addressed.

10. SALVAGE AND PROTECTION OF PROPERTY

The "Insured", in the event that any "Property of Others" is damaged, destroyed or lost shall take all reasonable steps to protect and preserve the "Property of Others" from further damage or to recover the "Property of Others".

The Insurer shall contribute pro rata toward any reasonable and proper expenses in connection with the foregoing according to the respective interests of the parties. These expenses do not increase the Limits of Insurance.

11. ABANDONMENT

Under no circumstances shall there be abandonment of any "Property of Others" by the "Insured" to the Insurer.