

COMMERCIAL GENERAL LIABILITY COVERAGE

MANUFACTURER'S ERRORS AND OMISSIONS LIABILITY EXTENSION

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 is a claims-made form. ANY CLAIM MUST FIRST BE MADE AGAINST YOU DURING THE POLICY PERIOD IN ACCORDANCE WITH THE EXTENDED REPORTING PERIOD SECTION.

Coverage as provided by this Form may also be provided elsewhere in the Policy or by another policy we issued to the you. In the event of any such coverage duplication or overlap, only the coverage as provided by this Form will apply.

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

Coverage afforded by the Commercial General Liability Max Form is extended as follows:

1. INSURING AGREEMENT

- 1.1. We will pay those sums that the Insured become legally obligated to pay as **damages** because of an **error** committed in the course of your **business operations**. We will have the right and duty to defend the Insured against any **action** seeking those **damages**. However, we will have no duty to defend the Insured against any **action** seeking **damages** for which no coverage under this Extension is provided. We may, at our discretion, investigate any **occurrence** and settle any claim or **action** that may result. But:

1.1.1. The amount we will pay for **damages** is limited as described in Paragraph 2. **LIMIT OF INSURANCE AND DEDUCTIBLE** of this Endorsement.

1.1.2. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgements, settlements, defence and supplementary payments.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under the **SUPPLEMENTARY PAYMENTS – Coverages A, B and D** of the Commercial General Liability Max Form to which this Endorsement is attached.

- 1.2. This insurance applies to **damages** only if:

1.2.1. The **error** is caused by an **occurrence** that takes place in the **coverage territory**; and

1.2.2. The claim is first made against you and first reported to us during the **policy period**; and

1.2.3. 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 **damages** had occurred, in whole or in part. If such a listed Insured or authorized **employee** knew, prior to the **policy period**, that the **damages** occurred, then any continuation, change or resumption of such **damages** during or after the **policy period** will be deemed to have been known prior to the **policy period**.

- 1.3. **Damages** which occur during the **policy period** and were not, prior to the **policy period**, known to have occurred by any Insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** of the Commercial General Liability Max Form or any **employee** authorized by you to give or receive notice of an **occurrence** or claim, and includes any continuation, change or resumption of these **damages** after the end of the **policy period**.

- 1.4. **Damages** will be deemed to have been known to have occurred at the earliest time when any Insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** of the Commercial General Liability Max Form or any **employee** authorized by you to give or receive notice of an **occurrence** or claim:

1.4.1. Reports all or any part, of the **damages** to us or any other insurer;

1.4.2. Receives a written or verbal demand or claim for **damages** because of the **error**; or

1.4.3. Becomes aware by any other means that **damages** have occurred or has begun to occur.

- 1.5. **Damages** because of an **error** include **damages** claimed by any person or organization for care, loss of services or death resulting at any time from the **error**.

2. LIMIT OF INSURANCE AND DEDUCTIBLE

- 2.1. The Limit of Insurance shown in the Declaration Page(s) for this Extension is the most we will pay for **damages** under this Endorsement.

- 2.2. The Limit of Insurance shown in the Declaration Page(s) for this Endorsement is an aggregate limit and is the most that we will pay in any one **policy period**, regardless of the number of claims, the number of claimants or the number of Insureds.

- 2.3. The Limit of Insurance shown for this Endorsement is in addition to, and not part of, the Limit of Insurance – Each Occurrence Limit applicable to the Commercial General Liability Max Form.

- 2.4. Except in the province of Quebec, all defence and supplementary payments that are directly related to this Extension are payable by us as part of, and not in addition to, the Limits of Insurance specified in the Declaration Page(s) for this Endorsement.

- 2.5. Deductible

2.5.1. Our obligation to pay **damages** on the Insured's behalf applies only to the amount of **damages** in excess of any deductible amount specified in the Declaration Page(s) as the deductible sum for this Endorsement, for each and every claim (including, except in the Province of Quebec, legal fees, adjusting expenses and all other fees and expenses combined) under the Insuring Agreement of this Endorsement. With respect to such fees and expenses, your obligation to pay the stated deductible amount applies (except in the Province of Quebec) whether a settlement is paid or not.

- 2.5.2. The terms of this insurance, including those with respect to notice of claim, accident or occurrence and the Insurer's right to investigate, negotiate and settle any claim or suit apply irrespective of the application of the deductible amount.
- 2.5.3. We may pay any part of 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.

3. EXCLUSIONS

This insurance does not apply to:

- 3.1. Any claim arising out of or relating to **bodily injury, personal injury or advertising injury**;
- 3.2. Any claim arising out of or related to **property damage**. This exclusion does not apply to loss of use of **impaired property** if such loss of use results in **economic loss** arising directly from an **error**;
- 3.3. Your costs or expenses to make **your products** comply with **written specifications**;
- 3.4. Any claim for costs or expenses incurred by you for the repair or replacement of defective materials or workmanship in **your work**;
- 3.5. Any claim arising out of or relating to cost guarantees, cost estimates or estimates of probable costs being exceeded;
- 3.6. Any claim for the return of all or any part of payments made to you by the your customers for the **your products**;
- 3.7. Any claim arising out of gradual deterioration or wear and tear of **your product** or out of any quality of **your product** that causes it to damage or destroy itself;
- 3.8. Any liability arising out of a delay in the performance of any written or verbal contract or agreement. This exclusion does not apply to a representation or warranty that **your product** will substantially conform to the **written specifications**;
- 3.9. Any loss, cost or expense incurred by you or others and arising out of or relating to the withdrawal or recall of **your work**, on **your product** or **impaired property**, 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;
- 3.10. Any dishonest, fraudulent, criminal or malicious acts by or on behalf of any Insured or any person or organization for which the Insured is legally responsible;
- 3.11. Any **error** that occurred prior to the effective date of this Extension or an **error** that occurs after the **policy period**;
- 3.12. Any **error**, all or any part of which is expected or intended by you or by anyone acting on your behalf;
- 3.13. 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;
- 3.14. Any fines or penalties.
- 3.15. Asbestos – see Common Exclusions.
- 3.16. Fungi or Spores – see Common Exclusions.
- 3.17. Nuclear Energy Liability – see Common Exclusions.
- 3.18. Pollution – see Common Exclusions.
- 3.19. Terrorism – see Common Exclusions.
- 3.20. War Risks – see Common Exclusions.
- 3.21. Unsolicited Communication – see Common Exclusions.

4. EXTENDED REPORTING PERIOD

Coverage as provided by this Extension is subject to an automatic extended reporting period is included within the coverage provided by this Extension. The extended reporting period starts with the expiration date and time of the **policy period** of this Form and ends no later than ninety (90) consecutive days after such expiration date and time.

A claim first made during the extended reporting period will be deemed to have been made on the last day of the **policy period**. This extended reporting period does not alter or reinstate the Limit of Insurance for this Extension.

The extended reporting period does not apply to any claim that is covered under any subsequent insurance in effect for you, whether or not the limits of such subsequent insurance has been exhausted or not.

5. SUPPLEMENTARY PAYMENTS

SUPPLEMENTARY PAYMENTS - Coverage A, B and D section in Commercial General Liability Max Form is extended to apply to this Extension.

6. DEFINITIONS

For the purpose of this Extension:

- 6.1. **Business operations** means your operations described in the Declaration Page(s).
- 6.2. **Damages** means damages due or awarded as indemnification for **economic loss** due to loss of use of tangible property of others that is not physically damaged, if the loss of use results from an **error**.
- 6.3. **Compensatory damages** (as used in this Extension) means damages due or awarded as indemnification for **economic loss** due to loss of use of tangible property of others that is not physically damaged, if the loss of use results from an **error**.
- 6.4. **Economic loss** means the difference between the net profit (before income taxes) that would have been earned during the period of insured loss of use; and the net profit before incomes taxes that is actually earned during the period of insured "loss of use". Subtracted from this difference will be the salvage value of any property that suffers the loss of use.
- 6.5. **Error** means any error, omission or negligent act by or on behalf of any Insured which results in the failure of **your product** to meet the written specifications described in **written specifications**, provided that such failure occurs after testing and inspection (by you or at your direction) and after final acceptance of **your product** by your customer.
- 6.6. **Written Specifications** means stipulations in writing (including design specifications which are provide in advance by an Insured to the customer to whom **your product** is being offered for sale) as to the durability, fitness, quality or performance of **your products** purchased from the Insured.

All other terms and conditions of the Policy remain unchanged.