

Builders Risk Broad Form

WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN CLAUSE 16

1. INDEMNITY AGREEMENT

In the event that any of the insured property is lost or damaged during the policy period by an insured peril, the Insurer will indemnify the Insured against the direct loss or damage so caused to an amount not exceeding whichever is the least of:

- (a) the value of the lost or damaged property as determined in Clause 9;
- (b) the interest of the Insured in the property;
- (c) the amount of insurance specified on the "Declarations Page" for the lost or damaged property.

The inclusion of more than one person or interest shall not increase the Insurer's liability.

2. ADDITIONAL INSURED

All contractors and/or all subcontractors are added as Additional Insureds. The following are not Additional Insureds:

- (a) suppliers who perform no construction or installation work at the "project site";
- (b) consulting engineers; or
- (c) consulting architects.

3. INSURED PROPERTY

This Form insures those of the following items for which an amount of insurance is specified on the "Declarations Page".

A. At the "project site", provided that the value of the described property, whether owned by the Insured or by others, is included in the amount of insurance:

- (a) property in course of construction or installation other than property described in 3. A. (b), all to enter into and form part of the completed project including expendable materials and supplies, not otherwise excluded, necessary to complete the project.
- (b) landscaping, growing trees, plants, shrubs or flowers, all to enter into and form part of the completed project;
- (c) temporary buildings, scaffolding, falsework, forms, hoardings, excavation, site preparation and similar work, but only to the extent that "replacement" or restoration is necessary to complete the project.

B. The property described in Clause 3. A. anywhere in Canada or continental United States of America while:

- (a) in transit;
- (b) in storage at any other location, but not while:
 - (i) in transit;
 - (ii) being manufactured; or
 - (iii) undergoing any process.

4. DEDUCTIBLE

The Insurer is liable for the amount by which the loss or damage caused by an insured peril exceeds the amount of the deductible specified on the "Declarations Page" in any one occurrence.

Should any occurrence give rise to the application of more than one deductible amount for any one "project site", only the highest deductible will be applied.

5. INSURED PERILS

This Form, except as otherwise provided, insures against all risks of direct physical loss of or damage to the insured property.

6. EXCLUSIONS

A. EXCLUDED PROPERTY

This Form does not insure loss of or damage to:

- (a) property at locations which to the knowledge of the Insured, are vacant, unoccupied or shut down for more than 30 consecutive days;
- (b) electrical devices, appliances or wiring caused by artificially generated electrical current, including arcing. This exclusion shall not apply when the proximate cause of the loss or damage is a peril not otherwise excluded in this Form, nor shall this exclusion apply to loss or damage caused by any ensuing fire or explosion;
- (c) money, "cash cards", bullion, platinum or other precious metals or alloys, securities, stamps, tickets (except lottery tickets) and tokens, evidence of debt or title;
- (d) automobiles, watercraft, amphibious or air cushioned vehicles, aircraft, spacecraft, trailers, motors or other accessories attached to or mounted on such property;
- (e) property illegally acquired, kept, stored or transported; property subject to forfeiture, seized or confiscated for breach of any law or by order of any public authority;
- (f) property

- (i) while waterborne, from the commencement of loading until completion of discharge, except on a ferry, railway car or transfer barge, all in connection with land transportation;
- (ii) insured under a Marine Policy; or
- (iii) aboard or being transported by any aircraft;
- (g) contractor's tools and equipment including spare parts and accessories whether owned, loaned, hired or leased other than property specified in clause 3 A (c);
- (h) fixed structures existing before the policy period.

B. EXCLUDED PERILS

This Form does not insure against loss or damage caused directly or indirectly:

- (a) in whole or in part by earthquake. This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage, except for loss or damage caused directly by resultant fire, explosion, smoke, or leakage from "fire protective equipment", provided such perils are not otherwise excluded in this Form. This exclusion does not apply to property in transit;
- (b) in whole or in part by flood, including "surface water", waves, tides, tidal waves, tsunamis, or the breaking out or overflow of any natural or artificial body of water. This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage, except for loss or damage caused directly by resultant fire, explosion, smoke, leakage from "fire protective equipment", provided such perils are not otherwise excluded in this Form. This exclusion does not apply to property in transit or loss or damage caused directly by leakage from a watermain;
- (c) (i) by seepage, leakage or influx of water derived from natural sources through basement walls, doors, windows or other openings therein, foundations, basement floors, sidewalks, sidewalk lights, or by the backing up of sewers, sumps, septic tanks or drains, unless concurrently and directly caused by a peril not otherwise excluded in Clause 6b of this Form;
- (ii) by the entrance of rain, sleet or snow through doors, windows, skylights or other similar wall or roof openings unless through an aperture concurrently and directly caused by a peril not otherwise excluded in Clause 6b of this Form;
- (d) by centrifugal force, mechanical or electrical breakdown or derangement. This exclusion does not apply to loss or damage caused directly by a resultant peril not otherwise excluded in this Form.
- (e) (i) by dampness or dryness of atmosphere;
- (ii) by changes in or extremes of temperature, heating, frost or freezing;

This exclusion (e) does not apply to loss or damage caused directly by:

- (1) fire, lightning, explosion, impact by aircraft, spacecraft, or land vehicle, riot, strike, vandalism, malicious acts;
- (2) rupture of pipes or breakage of apparatus;
- (3) theft or attempted theft;
- (4) an accident to a transporting conveyance;

provided such perils are not otherwise excluded in this Form;

- (f) (i) by shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, or change in colour or texture or finish;
- (ii) by contamination;
- (iii) by marring, scratching or crushing.

This exclusion (f) does not apply to loss or damage caused directly by:

- (1) fire, lightning, explosion, impact by aircraft, spacecraft, or land vehicle, riot, strike, vandalism, malicious acts;
- (2) rupture of pipes or breakage of apparatus;
- (3) theft or attempted theft;
- (4) an accident to a transporting conveyance;

- (g) by smoke from agricultural smudging or industrial operations;
- (h) by rodents, insects, bats, raccoons, skunks or vermin. This exclusion does not apply to loss or damage caused directly by a peril not otherwise excluded in this Form;
- (i) by delay, loss of market, or loss of use or occupancy;
- (j) in whole or in part by war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military power. This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage;
- (k) (i) by any nuclear incident (as defined in the Nuclear Liability Act or any other nuclear liability act, law or statute, or any amending law) or nuclear explosion, except for ensuing loss or damage which results directly from fire, lightning or explosion of natural, coal or manufactured gas;
- (ii) by contamination by radioactive material;
- (l) (i) by any dishonest or criminal act committed by the Insured or any agent of the Insured, acting alone or in collusion with others;
- (ii) by theft or attempted theft committed by any employee of the Insured, acting alone or in collusion with others;
- (iii) by any dishonest or criminal act committed by anyone, except as stated in (l) (ii), when the Insured or any agent of the Insured knew or ought to have known prior to the loss or damage, of the dishonest or criminal act.

Exclusion (I) (ii) does not apply to physical damage caused directly by an employee of the Insured which results from a peril not otherwise excluded in this Form.

Exclusion (I) (iii) does not apply if, upon becoming aware of the dishonest or criminal act, the Insured or any agent of the Insured immediately notifies the police and the Insurer.

- (m) proximately or remotely, arising in consequence of or contributed to by the enforcement of any by-law, regulation, ordinance or law regulating zoning or the demolition, repair or construction of buildings or structures, which by-law, regulation, ordinance or law makes it impossible to repair or reinstate the property as it was immediately prior to the loss;
- (n) by cessation of work or by interruption of construction. This exclusion does not apply to loss or damage caused directly by a peril not otherwise excluded in this Form;
- (o) by voluntary parting with any property by the Insured or anyone to whom the Insured has entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretence, regardless of the method or instrument used to perpetrate the deception.

C. POLLUTION EXCLUSION

This Form does not insure against:

- (a) loss or damage caused directly or indirectly by any actual or alleged spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants", nor the cost or expense of any resulting "clean up". This exclusion does not apply:
 - (i) if the spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants" is directly caused by a peril not otherwise excluded in this Form, or
 - (ii) to loss or damage caused directly by a resultant peril not otherwise excluded in this Form;
- (b) cost or expense for any testing, monitoring, evaluating or assessing of an actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of "pollutants".

D. DATA EXCLUSION

- (1) This Form does not insure "data".
- (2) This Form does not insure loss or damage caused directly or indirectly by a "data problem". This exclusion (2) does not apply to loss or damage caused directly by resultant fire, explosion, smoke, or leakage from "fire protective equipment".

E. TERRORISM EXCLUSION

This Form does not insure loss or damage caused directly or indirectly, in whole or in part, by "terrorism" or by any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism". This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage. If any portion of this exclusion is found to be invalid, unenforceable or contrary to statute, the remainder shall remain in full force and effect.

F. FUNGI AND SPORES EXCLUSION

This Form does not insure:

- (a) loss or damage consisting of or caused directly or indirectly, in whole or in part, by any "fungi" or "spores". This exclusion does not apply:
 - (i) if the "fungi" or "spores" are directly caused by a peril not otherwise excluded in this Form, or
 - (ii) to loss or damage caused directly by a resultant peril not otherwise excluded in this Form;
- (b) the cost or expense for any testing, monitoring, evaluating or assessing of "fungi", or "spores".

G. OTHER EXCLUDED LOSSES:

This Form does not insure:

- (a)
 - (i) wear and tear;
 - (ii) rust or corrosion;
 - (iii) gradual deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself.

This exclusion (a) does not apply to loss or damage caused directly by a resultant peril not otherwise excluded in this Form;
- (b) the cost of making good:
 - (i) faulty or improper material;
 - (ii) faulty or improper workmanship;
 - (iii) faulty or improper design.

This exclusion (b) does not apply to loss or damage caused directly by a resultant peril not otherwise excluded in this Form;
- (c) mysterious disappearance, or shortage of insured property disclosed on taking inventory;
- (d) penalties or liquidated damages for non-completion of or delay in completion of contract or non-compliance with contract conditions. Also excluded are costs incurred solely in an effort to eliminate or reduce such penalties or liquidated damages;

7. EXTENSIONS OF COVERAGE

The following extensions of coverage shall not increase the amounts of insurance applying under this Form and are subject to all the

conditions of this Form.

(a) **Removal:** If any of the insured property is necessarily removed from the "project site" to prevent loss of or damage to or further loss of or damage to such property, that part of the insurance under this Form that exceeds the amount of the Insurer's liability for any loss already incurred shall, for 7 days only, or for the unexpired term of the Policy if less than 7 days, insure the property removed and any property remaining at the "project site" in the proportions which the value of the property in each of the locations bears to the value of the property in them all.

(b) (i) **Debris Removal:** The Insurer will indemnify the Insured for expenses incurred in the removal from the "project site" of debris of the insured property, occasioned by loss of or damage to such property, for which loss or damage insurance is afforded under this Form.

The amount payable under this extension shall not exceed 25% of the sum of:

- (1) the total amount payable for the direct loss of or damage to insured property; and
- (2) the amount of the applicable deductible.

(ii) **Removal of Windstorm Debris:** The Insurer will indemnify the Insured for expenses incurred in the removal of debris or other property which is not insured by this Form but which has been blown by windstorm upon the "project site".

Extensions of coverage b(i) and b(ii) do not apply to costs or expenses:

- (1) to "clean up" "pollutants" from land or water; or
- (2) 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".

8. CESSATION OF COVERAGE

This Form ceases to insure the project:

(a) on the commencement of use or occupancy of any part or section of the project unless such use or occupancy is for:

- (i) construction purposes;
- (ii) office, habitation, banking or parking purposes or a convenience store less than 465 square metres in area;
- (iii) installation, testing and commissioning of permanent building systems or storing of equipment or machinery;

(b) when the "project site" is left unattended for more than 30 consecutive days or when construction activity has ceased for more than 30 consecutive days;

(c) the expiration of this insurance;

whichever first occurs.

9. VALUATION

"Replacement Cost":

(a) In the event of loss of or damage to the insured property the Insurer agrees to make settlement on the basis of "replacement cost" subject to the following provisions:

- (i) "replacement" shall be effected by the Insured with due diligence and dispatch;
- (ii) settlement on a "replacement cost" basis shall be made only when "replacement" has been effected by the Insured and in no event shall it exceed the amount actually and necessarily expended for such "replacement";
- (iii) any other insurance effected by or on behalf of the Insured in respect of the perils insured against by this Form on the property to which this clause is applicable shall be on the basis of "replacement cost";
- (iv) failing compliance by the Insured with any of the above provisions of 9 (a), settlement shall be based on the actual cash value at the time and place of loss or damage, but not exceeding what it would then cost to repair or replace with material of like kind and quality.

(b) In the event that new property of like kind and quality is not obtainable, new property which is as similar as possible to that lost or damaged and which is capable of performing the same function shall be deemed to be new property of like kind and quality for the purposes of this clause.

(c) This clause 9. does not apply to any increase in the cost of "replacement" occasioned by a restriction or prohibition in any by-law, regulation, ordinance or law.

10. LOSS ADJUSTMENT

Any claim for loss or damage under this Form shall be adjusted with, if named in this policy, the General Contractor or Owner.

11. BREACH OF CONDITION

If the Insured does not comply with a condition of this insurance, any claim for subsequent loss or damage is not recoverable. The Insurer will not deny a claim for this reason unless the Insurer proves that the non-compliance caused or contributed to the loss or damage. Coverage will not be affected if the Insured fails to comply with a condition in part of the "project site" over which the Insured has no control.

12. REINSTATEMENT

Loss under any item of this Form shall not reduce the applicable amount of insurance.

13. SUBROGATION

The Insurer, upon making any payment or assuming liability for payment under this Form shall be subrogated to all rights of recovery of the Insured against others and may bring action to enforce such rights. All rights of subrogation are waived against any corporation, firm, individual or other interest with respect to which insurance is provided by this Form. However, the Insurer does not waive its right of subrogation against any architect, engineer or other consultant with respect to coverage provided for loss or damage caused directly by a peril not otherwise excluded that results from faulty or improper design.

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.

Any release from liability entered into by the Insured prior to loss shall not affect the right of the Insured to recover.

14. PREMIUM ADJUSTMENT

The premium stated on the "Declarations Page" for this Form is provisional. Within 30 days after the termination or expiration of this insurance the Insured shall report to the Insurer the actual completed contract price and the value of any property not included in such completed contract price and insured by this Form or, in the absence of a contract price, the Insured shall report the total completed value of the project.

The actual premium shall be calculated from inception date of this Form on the total value so reported at the rate shown on the "Declarations Page". If the premium so calculated exceeds the provisional premium, the Insured shall pay to the Insurer the amount of such excess. If such premium is less than the provisional premium, the Insurer shall refund to the Insured the amount of the difference, subject to any minimum retained premium. Nothing in this clause shall increase the limit of the Insurer's liability.

15. VERIFICATION OF VALUES

The Insurer or its duly appointed representative shall be permitted at all reasonable times during the policy period, or within a year after termination or expiration, to inspect the insured property and to examine the Insured's books, records and such policies as relate to any insured property. Such inspection or examination shall not waive nor in any manner affect any of the terms or conditions of this Form.

16. DEFINITIONS

Wherever used in this Form:

- (a) **"Cash cards"** means cards designed to store a cash value by electronic means as a mode of payment, without a personal identification number and without direct access to a bank or other account.
- (b) **"Clean up"** means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or remediation of "pollutants", including testing which is integral to any of these processes.
- (c) **"Data"** means representations of information or concepts, in any form.
- (d) **"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".
- (e) **"Declarations Page"** means the Declarations Page applicable to this Form.
- (f) **"Fire protective equipment"** includes tanks, watermain, hydrants, valves and any other apparatus whether used solely for fire protection or jointly for fire protection and for other purposes, but does not include:
 - (i) branch piping from a joint system where such branches are used entirely for purposes other than fire protection;
 - (ii) any watermain or appurtenances outside of the "project site" and forming a part of the public water distribution system; or
 - (iii) any pond or reservoir in which the water is impounded by a dam.
- (g) **"Fungi"** includes, but is not limited to, any form or type of mould, yeast, mushroom or mildew 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) **"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.
- (i) **"Project site"** means the site of the project described on the "Declarations Page".
- (j) **"Replacement"** includes repair, construction or reconstruction with new property of like kind and quality.
- (k) **"Replacement Cost"** means whichever is the least of the cost of replacing, repairing, constructing or reconstructing the property on the same "project site" with new property of like kind and quality and for like occupancy. No deduction shall be made for:
 - (i) depreciation;
 - (ii) necessary and reasonable professional fees, or
 - (iii) reasonable contractors' and sub-contractors' overhead and profit.
- (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) **"Surface water"** means water or natural precipitation temporarily diffused over the surface of the ground.

(n) **“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.

EXCEPT AS OTHERWISE PROVIDED IN THIS FORM, ALL TERMS, CONDITIONS AND PROVISIONS OF THE POLICY TO WHICH THIS FORM IS ATTACHED SHALL HAVE FULL FORCE AND EFFECT.