

**Form #FR001 (rev. April 2 2008)**  
**Builders Risk Broad Form****WORDS AND PHRASES IN QUOTATION MARKS HAVE SPECIAL MEANING AS DEFINED IN THE DEFINITIONS SECTION OF THE POLICY****1. INDEMNITY AGREEMENT**

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

- (a) the "replacement cost" value of the property at the time of loss or damage but in no event to exceed the amount necessarily expended for "replacement";
- (b) the interest of the Insured in the property;
- (c) the amount of insurance specified on the "Declarations Page" in respect of the property lost or damaged.

Provided, however, that where the insurance applies to the property of more than one person or interest, the Insurer's total liability for loss sustained by all such persons and interests shall be limited in the aggregate to the amount or amounts of insurance specified on the "Declarations Page".

**2. PROPERTY INSURED**

This Form, except as provided in this Form, insures the following property at the "project site" for the amount of insurance specified on the "Declarations Page" for the "Project Site":

- (a) property in course of construction, installation, reconstruction or repair other than property described in 2(b):
  - (i) owned by the Insured;
  - (ii) owned by others, provided the value of such property is included in the amount of insurance;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 project provided that the value of such property is included in the amount of insurance;
- (c) temporary buildings, scaffolding, falsework, forms, hoardings, excavation, site preparation and similar work, provided that the value thereof is included in the amount of insurance and then only to the extent that "replacement" or restoration is necessary to complete the project.

**3. DEDUCTIBLE**

The Insurer is liable for the amount by which the loss or damage caused by any of the perils insured against exceeds the amount of the deductible specified on the "Declarations Page" in any one occurrence. Should one occurrence give rise to the application of more than one deductible, only the largest individual deductible amount shall apply.

**4. PERILS INSURED**

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

**5. PROPERTY EXCLUDED**

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 currents, including arcing, unless fire or explosion ensues and then only for such ensuing loss or damage, provided such perils are not excluded in Clauses 6A and 6B hereof;
- (c) money, bullion, platinum and other precious metals and alloys, securities, stamps, 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;
  - (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 2(c).

**6. A. PERILS EXCLUDED**

This Form does not insure:

- (a) All costs rendered necessary by defects of material workmanship design plan or specification and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage. For the purpose of this policy and not merely this exclusion it is understood and agreed that any portion of the Insured Property shall not be regarded as damaged solely by virtue of the existence of any defect of material workmanship design plan or specification;
- (b) penalties or liquidated damages for non-completion of or delay in completion of contract or non-compliance with contract conditions or costs incurred solely in an effort to eliminate or reduce penalties or liquidated damages for which the Insured may be contractually liable;
- (c) any increase in the "replacement cost" occasioned by a restriction or prohibition in any by-law, regulation, ordinance or law;
- (d) wear and tear, gradual deterioration, latent defect or inherent vice, provided, however, to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property is insured.
- (e) mysterious disappearance or shortage of insured property disclosed when taking inventory.

**6. B. ADDITIONAL PERILS EXCLUDED**

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

- (a) by cessation of work or by interruption of construction, unless directly caused by a peril otherwise insured and not otherwise excluded under this Form.
  - (b) by earthquake, except for ensuing loss or damage which results directly from fire, explosion, smoke or "leakage from fire protective equipment", provided such perils are not otherwise excluded in this Form;
  - (c) by flood, including waves, tides, tidal waves, and the rising of, the breaking out or the overflow of, any body of water, whether natural or man-made, but this exclusion does not apply to ensuing loss or damage which results directly from fire, explosion, smoke or "leakage from fire protective equipment", provided such perils are not otherwise excluded in this Form;
- Exclusions (b) and (c) do not apply to property in transit;

- (d) by mechanical or electrical breakdown or derangement provided, however to the extent otherwise insured and not otherwise excluded under this Form, resultant damage to the property shall be insured;
- (e) by rust or corrosion, frost or freezing, pollution or contamination unless caused directly by a peril not otherwise excluded in this Form;
- (f) by dampness or dryness of atmosphere, changes of temperature, heating, shrinkage, evaporation, loss of weight, leakage of contents, exposure to light, change in colour or texture or finish, marring, scratching or crushing, but this exclusion does not apply to loss or damage caused directly by fire, lightning, explosion, impact by aircraft, spacecraft, or land vehicle, riot, strike, vandalism, malicious acts, rupture of pipes or breakage of apparatus, theft or attempt thereof or accident to transporting conveyance provided such perils are not otherwise excluded in this Form;
- (g) by smoke from agricultural smudging or industrial operations;
- (h) by rodents, insects, or vermin but 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) by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
- (k) (i) by 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;
- (ii) by contamination by radioactive material;
- (l) by misappropriation, secretion, conversion, infidelity or any dishonest manner of acquiring possession on the part of the Insured or any other party of interest, employees or agents of the Insured, or any person to whom the property may be entrusted (bailees for hire excepted);
- (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 disturbance or erasure of electronic recordings by electric or magnetic injury except by lightning.

#### 7. PILING EXCLUSION

The Insurer(s) shall not be liable for

1. Any costs in respect of
  - (a) Foundation piles and / or casings and / or sheet pile constructions which are
    - i) misplaced or mis-aligned
    - ii) Damaged during driving and / or extraction
    - iii) the subject of individual or block disconnection or declutching
  - (b) leakage or infiltration of liquid or material at seams joints connections and / or beneath sheet pile constructions or into casings
  - (c) abandoned piling work unless such abandonment is a direct consequence of Damage insured by this policy
  - (d) Piles which have failed to pass a load test or to reach the required bearing load unless such failure is a direct consequence of Damage insured by this policy
  - (e) Damage resulting from or attributable to the continued use of identified sub-standard piling work which was known to any Insured prior to the loss or damage unless the design and / or method of construction of subsequent works had been amended to rectify the deficiency identified
2. Costs in excess of the original pile value in place. The original pile value shall be calculated by dividing the total contract value for each particular section of piling work by the total number of piles in each such section

#### 8. DEWATERING EXCLUSION

It is hereby declared and agreed that the Insurers shall not be liable for expenses incurred in de-watering even if the quantities of water originally expected are exceeded or for additional protections and facilities for the discharge of run-off of underground water.

Insurers shall not be liable for loss or damage due to breakdown of the de-watering system if such breakdown could have been avoided by sufficient stand-by facilities.

#### 9. EXTENSIONS OF COVERAGE

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

- (a) **Removal:** If any of the insured property is necessarily removed from the "project site" to prevent loss or damage or further loss or damage thereto, 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 respective 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 property insured, occasioned by loss 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 total amount payable for the direct physical loss to property insured plus 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:
  - (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".
- (c) **Offsite Coverage/ Transit:** This Form insures the property described in Clause 2:
  - (i) In transit in Canada and continental United States of America (excluding Alaska) for the amount of insurance specified on the "Declarations Page" for In Transit.
  - (ii) At any location in Canada and continental United States of America (excluding Alaska) other than in transit or while being manufactured or undergoing any process, for the amount of insurance specified on the "Declarations Page" for Any Other Location.

#### 10. CESSATION OF COVERAGE & Permitted Use/Occupancy

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 or habitational purposes;
    - (iii) installing, testing or storing equipment or machinery;
  - (b) when 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.

#### 11. LOSS ADJUSTMENT

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

#### 12. BREACH OF CONDITIONS

Where a loss occurs and there has been a breach of condition relating to a matter before the happening of the loss, which breach would otherwise disentitle the Insured from recovery under this Form, the breach shall not disentitle the Insured from recovery if the Insured establishes that the loss was not caused or contributed to by the breach of condition or if the breach of condition occurred in any portion of the project over which the Insured has no control.

**13. MULTIPLE INSURED CLAUSE**

It is hereby declared and agreed that :

- (a) if the Insured described in the schedule comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this Multiple Insureds Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the sums insured and limits of indemnity including any inner limits set by memorandum or endorsement stated in the policy.
- (b) any payment or payments by Insurers to any one or more such insured parties shall reduce to the extent of that payment Insurers liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- (c) the insured parties will at all times preserve and enforce the various contractual agreements entered into by the insured parties and the contractual remedies of such parties in the event of loss or damage.
- (d) insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of the insured parties in circumstances of fraud material misrepresentation non-disclosure or material breach of any warranty or condition of this policy committed by that insured party each referred to in this clause as a Vitiating Act.
- (e) (save as provided in this Multiple Insureds Clause) a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (f) insurers shall waive all rights of subrogation which they may have or acquire against any insured party except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act in which circumstances Insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an Insured.
- (g) in the event of any Vitiating Act committed by any one or more insured parties the lenders or future lenders to the project shall not be entitled to any indemnity under this policy for or arising from loss or damage in respect of which Insurers are otherwise no longer liable to indemnify any other one or more insured parties by reason of a Vitiating Act or Acts.

**14. REINSTATEMENT**

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

**15. SUBROGATION**

The Insurer, upon making any payment or assuming liability therefor under this Form, shall be subrogated to all rights of recovery of the Insured against others and may bring action to enforce such rights. Notwithstanding the foregoing, all rights of subrogation are hereby waived against any corporation, firm, individual or other interest with respect to which insurance is provided by this Form.

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.

**16. PREMIUM ADJUSTMENT**

The premium stated in 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 herein 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.

**17. VERIFICATION OF VALUES**

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

**18. DEFINITIONS**

Wherever used in this Form:

- (a) "Insured" shall mean the Named Insured specified on the Declarations as owner and all contractors of the project, project managers, subcontractors, engineers, architects and consultants directly and indirectly engaged in work or services for the project site.
- (b) "Declarations Page" means the Declarations Page applicable to this Form.
- (c) "Project Site" means the site of the project described on the "Declarations Page".
- (d) "Fire Protective Equipment" includes tanks, watermains, hydrants, valves and any other equipment 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 watermains or appurtenances located outside of the "project site" and forming a part of the public water distribution system;
  - (iii) any pond or reservoir in which the water is impounded by a dam.
- (e) "Leakage From Fire Protective Equipment" means the leakage or discharge of water or other substance from within the equipment used for fire protection purposes for the project specified on the "Declarations Page" or for adjoining premises and loss or damage caused by the fall or breakage or freezing of such equipment.
- (f) "Replacement" includes repair, construction or reconstruction with new property of like kind and quality.
- (g) "Replacement Cost" means the cost of replacing, repairing, constructing or reconstruction (whichever is the least) the property on the same "project site" with new property of like kind and quality and for like occupancy without deduction for depreciation.
- (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) "Clean Up" means the removal, containment, treatment, decontamination, detoxification, stabilization, neutralization or remediation of "pollutants", including testing which is integral to the aforementioned processes.