

Form – 9745 Commercial Building, Equipment And Stock Named Perils Form

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 actual cash value of the property at the time of loss or damage;
- 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 insures the following property but only those items for which an amount of insurance is specified on the Declarations page:

Building

Equipment

Stock

Property of every description

Contents of every description

The insurance applies only while at the location(s) specified on the Declarations page, and in or on vehicles within 100 metres of such location(s).

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.

4. COINSURANCE CLAUSE

This clause applies separately to each item for which a coinsurance percentage is specified on the Declarations page.

The Insured shall maintain insurance concurrent with this form on the property insured to the extent of at least the amount produced by multiplying the actual cash value of the property by the coinsurance percentage specified on the Declarations page, and, failing so to do, shall only be entitled to recover the portion of any loss that the amount of insurance in force at the time of loss bears to the amount of insurance required to be maintained by this clause.

This clause applies only where the total loss exceeds the lesser of 2% of the applicable amount of insurance or \$5,000.

5. PERILS INSURED

This form insures against direct physical loss or damage caused by the following perils:

A) FIRE OR LIGHTNING

B) **EXPLOSION:** Except with respect to explosion of natural, coal or manufactured gas, there shall in no event be any liability hereunder for loss or damage caused by explosion, rupture or bursting in or of the following property owned, operated or controlled by the Insured:

- 1) a) The portions containing steam or water under steam pressure of all boilers generating steam, and piping or other equipment connected to said boilers and containing steam or water under steam pressure;
- b) Piping and apparatus or parts thereof normally containing steam or water under steam pressure from an external source and while under such pressure;
- c) The combustion chambers or fire boxes of steam generating boilers of the chemical recovery type and the flues or passages which conduct the gases of combustion therefrom;
- d) Smelt dissolving tanks;
- 2) Other vessels and apparatus, and pipes connected therewith, while under pressure, or while in use or in operation, provided their maximum normal internal working pressure exceeds 103 kilopascals (15 pounds per square inch) above atmospheric pressure except that liability is specifically assumed for loss or damage resulting from the explosion of manually portable gas cylinders;
- 3) Moving or rotating machinery or parts of same when such loss or damage is caused by centrifugal force or mechanical breakdown;
- 4) Any vessels and apparatus and pipes connected therewith while undergoing pressure tests, but this exclusion shall not apply to other property insured hereunder that has been damaged by such explosion;
- 5) Gas turbines;

The following are not explosions within the intent or meaning of this section:

- a) Electric arcing or any coincident rupture of electrical equipment due to such arcing;
- b) Bursting or rupture caused by hydrostatic pressure or freezing;
- c) Bursting or rupture of any safety disc, rupture diaphragm or fusible plug.

C) **IMPACT BY AIRCRAFT, SPACECRAFT OR LAND VEHICLE:** The terms Aircraft and Spacecraft include articles dropped therefrom.

There shall in no event be any liability hereunder due to cumulative damage or for loss or damage:

- 1) Caused by land vehicles belonging to or under the control of the Insured or any of his employees;
- 2) To aircraft, spacecraft or land vehicle causing the loss;
- 3) Caused by any aircraft or spacecraft when being taxied or moved inside or outside building.

- D) **RIOT, VANDALISM OR MALICIOUS ACTS:** The term Riot includes open assemblies of strikers inside or outside the premises who have quitted work and of locked-out employees.
There shall in no event be any liability hereunder for loss or damage:
- 1) Due to cessation of work or by interruption to process or business operations or by change(s) in temperature;
 - 2) Due to flood or release of water impounded by a dam, or due to any explosion other than an explosion in respect of which there is insurance under Clause 5. B) above;
 - 3) Due to theft of attempt thereat.
- E) **SMOKE:** The term smoke means smoke due to a sudden, unusual and faulty operation of any stationary furnace.
There shall in no event be any liability hereunder for any cumulative damage.
- F) **LEAKAGE FROM FIRE PROTECTIVE EQUIPMENT:** The term 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 premises described on the Declarations page or for adjoining premises and loss or damage caused by the fall or breakage or freezing of such equipment.
- G) **WINDSTORM OR HAIL:** There shall in no event be any liability hereunder for loss or damage:
- 1) To the interior of the buildings insured or their contents unless damage occurs concurrently with and results from an aperture caused by windstorm or hail;
 - 2) Directly or indirectly caused by any of the following, whether driven by wind or due to windstorm or not: snow-load, ice-load, tidal wave, high water, overflow, flood waterborne objects, waves, ice, land subsidence, landslide.

6. EXCLUSIONS

A. PROPERTY EXCLUDED

This form does not insure loss or damage to:

- a) Property at locations which to the knowledge of the Insured, are vacant, unoccupied or shut down for more than thirty consecutive days;
- b) Growing plants, trees, shrubs or flowers, all while in the open except as provided in the Extensions of Coverage Clause 7.c);
- 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 cushion vehicles, aircraft, spacecraft, trailers, motors or other accessories attached to or mounted on such property, but this exclusion shall not apply to watercraft, amphibious or air cushion vehicles held for sale, unlicensed automobiles or unlicensed trailers used in the business of the Insured when on the premises of the Insured;
- e) Goods occasioned by or happening through their undergoing any process involving the application of heat;
- f) 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.

B. PERILS EXCLUDED

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

- a) By war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power;
- b)
 - 1) 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 of natural, coal or manufactured gas;
 - 2) By contamination by radioactive material.
- c) 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.

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 conditions of this form.

- a) **Debris Removal:** The Insurer will indemnify the Insured for expenses incurred in the removal from the Insured's premises 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 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 location specified on the Declarations page.
Debris removal expense shall not be considered in the determination of actual cash value for the purpose of applying the Coinsurance Clause.
- b) **Removal:** If any of the insured property is necessarily removed from the location(s) specified herein 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 in the location(s) specified herein in the proportions which the value of the property in each of the respective location(s) bears to the value of the property in them all.
- c) **Growing Plants, Trees, Shrubs or Flowers in the Open:** This form is extended to insure loss or damage to growing plants, trees, shrubs or flowers in the open caused directly by the perils insured (with the exception of windstorm or hail). This extension of coverage shall be limited to a maximum recovery of \$500 for each growing plant, tree, shrub or flower in the open including debris removal expense.
- d) **Personal Property of Officers and Employees:** At the option of the Insured, equipment also includes personal property of officers and employees of the Insured. The insurance on such property:
 - 1) Shall not attach if it is insured by the owner unless the Insured is obliged to insure it or is liable for its loss or damage;
 - 2) Is, in any event, limited to a maximum recovery of \$250 in respect of any one officer or employee.

8. PERMISSION

Permission is hereby granted:

- a) For other insurance concurrent with this form;
- b) To make additions, alterations or repairs;
- c) To do such work and to keep and use such articles, materials, and supplies in such quantities as are usual or necessary to the Insured's business.

9. BREACH OF CONDITION

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 premises over which the Insured has no control.

10. REINSTATEMENT

Loss under any item of this form shall not reduce the applicable amount of insurance. In the event of a total loss the premium is fully earned.

11. SUBROGATION

The Insurer, upon making any payment or assuming liability therefore 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.

12. PROPERTY PROTECTION SYSTEMS

It is agreed that the Insured shall notify forthwith the Insurer of any interruption to, or flaw or defect, coming to the knowledge of the Insured, in any

- a) sprinkler or other fire extinguishing system; or
- b) fire detection system; or
- c) intrusion detection system;

and shall also notify forthwith the Insurer of the cancellation or non-renewal of any contract which provides monitoring or maintenance services to any of these systems or of the notification of the suspension of police service in response to any of these systems.

13. 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 termination 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. Such inspection or examination shall not waive nor in any manner affect any of the terms or conditions of this form.

14. VALUATIONS

For the purpose of calculating the total value of the property for the application of Coinsurance, value reporting and for loss adjustment, the following valuation basis applies:

- a) On unsold stock – the actual cash value of the property at the time any loss occurs, but in no event to exceed what it would cost to repair or replace with material of like kind and quality;
- b) On sold stock – the selling price after allowance for discounts;
- c) On property of others in the custody or control of the Insured for the purpose of performing work thereon – the amount for which the Insured is liable but in no event to exceed the actual cash value at the time and place of loss plus allowance for labour and materials expended to such time;
- d) On tenant's improvements and records – as defined in paragraphs a) and b) of Clause 15;
- e) On all other property insured under this form and for which no more specific conditions have been set out – the actual cash value at the time the loss or damage occurs but in no event to exceed what it would then cost to repair or replace with material of like kind and quality.

15. SPECIAL BASIS OF SETTLEMENT

a) Tenant's improvements

The liability of the Insurer shall be determined as follows:

- 1) If repaired or replaced with due diligence and dispatch, the amount actually and necessarily expended but in no event exceeding the actual cash value of the tenant's improvements immediately prior to the time of destruction or damage;
- 2) If not repaired or replaced with due diligence and dispatch after such loss, that portion of the original cost of the damaged or destroyed tenant's improvements which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such tenant's improvements were made to the expiration date of the lease.

b) Records

The liability of the insurer for loss or damage to:

- 1) Books of accounts, drawings, card index systems and other records, other than as described in 2) below, shall not exceed the cost of blank books, blank pages or other materials plus the cost of labour for actually transcribing or copying said records;
- 2) Media, data storage devices, and programme devices for electronic and electro-mechanical data processing or for electronically controlled equipment, shall not exceed the cost of reproducing such media, data storage devices, and programme devices from duplicates or from originals of the previous generation of the media, but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction.

Whichever of the above is applicable shall be the basis to be adopted for the purpose of applying Coinsurance.

16. PROPERTY OF OTHERS

At the option of the Insurer, any loss may be paid to the Insured or adjusted with and paid to the customer or the owner of the property.

17. DEFINITIONS

PREMIER MARINE

Wherever used in this form:

- a) **Building** means the building(s) described on the Declarations page and includes:
 - 1) Fixed structures pertaining to the building(s) and located on the premises;
 - 2) Additions and extensions communicating and in contact with the building(s);
 - 3) Permanent fittings and fixtures attached to and forming part of the building(s);
 - 4) Materials, equipment and supplies on the premises for maintenance of, normal repairs and minor alterations to the building or for building services;
 - 5) Growing plants, trees, shrubs or flowers inside the building used for decorative purposes when the Insured is the owner of the building.
- b) **Contents of every description** means the equipment and the stock.
- c) **Declarations Page** means the Declarations page applicable to this form.
- d) **Equipment** means:
 - 1) Generally all contents usual to the Insured's business including furniture, furnishings, fittings, fixtures, machinery, tools, utensils, signs, glass and appliances other than building or stock as herein defined;
 - 2) Similar property belonging to others which the Insured is under obligation to keep insured or for which he is legally liable;
 - 3) Tenant's improvements which are defined as building improvements, alterations and betterments made at the expense of the Insured and which are not otherwise insured, provided the Insured is not the owner of such building. If the Insured purchased the use interest in tenant's improvements made by a predecessor tenant, this form applies as though such tenant's improvements had been made at the expense of the Insured.
- e) **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:
 - 1) Branch piping from a joint system where such branches are used entirely for purposes other than fire protection;
 - 2) Any watermains or appurtenances located outside of the described premises and forming a part of the public water distribution system;
 - 3) Any pond or reservoir in which the water is impounded by a dam.
- f) **Premises** means the entire area within the property lines and areas under adjoining sidewalks and driveways at the locations described on the Declarations page.
- g) **Property of every description** means the building, the equipment and the stock.
- h) **Stock** means:
 - 1) Merchandise of every description usual to the Insured's business;
 - 2) Packing, wrapping and advertising materials; and
 - 3) Similar property belonging to others which the Insured is under obligation to keep insured or for which he is legally liable.

18. REPLACEMENT COST (Applicable only if specified on the Declarations page)

- 1. The Insurer agrees to amend the basis of settlement from actual cash value to replacement cost subject to the following provisions:
 - a) Replacement shall be effected by the Insured with due diligence and dispatch;
 - b) Replacement shall be on the same site or on an adjacent site;
 - c) 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;
 - d) Failing compliance by the Insured with any of the foregoing provisions, settlement shall be made as if this extension had not been in effect;
 - e) Any other insurance effected by or on behalf of the Insured in respect of the perils insured against by this policy on the property to which this extension is applicable shall be on the same basis of replacement cost as defined herein;
 - f) This extension applies separately to each item listed above.
- 2. Any reference to actual cash value in a coinsurance clause in this policy is deemed to be a reference to replacement cost of the property insured.
- 3. In this extension,
 - a) Replacement cost means the cost of replacing, repairing, constructing or reconstructing (whichever is the least) the property on the same site with new property of like kind and quality and for like occupancy without deduction for depreciation; and
 - b) Replacement includes repair, construction or reconstruction with new property of like kind and quality.
- 4. In the event that new property of like kind and quality is not obtainable, new property which is as similar as possible to that damaged or destroyed and which is capable of performing the same function shall be deemed to be new property of like kind and quality for the purpose of this extension.
- 5. **Exclusions**
This extension does not apply to:
 - a) Stock;
 - b) Patterns, dies, moulds;
 - c) Paintings, etchings, pictures, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelain, rare glassware, bric-a-brac or other articles of art, rarity or antiquity;
 - d) Manuscripts and records meaning books of account, drawings, card index systems and other records, media, data storage devices, and programme devices for electronic electro-mechanical data processing or for electronically controlled equipment;
 - e) Any increase in the cost of replacement occasioned by a restriction or prohibition in any by-law, regulation, ordinance or law.