

Introduction

Whereas the Insured named in the Schedule hereto has made to the Company a written proposal which together with any other statement made in writing by the Insured for the purpose of this Policy shall be deemed to be incorporated herein.

Now this policy of insurance witnesseth that subject to the Insured having paid to the Company the premium mentioned in the Schedule and subject to the terms, exclusions, conditions and provisions contained herein or endorsed hereon.

The Company hereby agrees with the Insured that if at any time during the period of insurance stated in the Schedule or during any subsequent period for which the Insured pays and the Company may accept the premium for the renewal of this Policy, the items (or any part thereof) entered in the Schedule, whilst within the territorial limits of New Zealand, shall suffer any unforeseen and sudden physical loss or damage from any cause, other than those specifically excluded, in a manner necessitating repair or replacement.

The Company will indemnify the Insured in respect of such loss or damage as hereinafter provided by payment in cash, replacement or repair (at their own option) up to an amount not exceeding in any one year of insurance in respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in all the total sum expressed in the Schedule as insured hereby.

This policy shall apply whether the insured items are at work or at rest, or being dismantled for the purpose of cleaning or overhauling, or in the course of the aforesaid operations themselves, or in the course of subsequent re-erection, but in any case only after successful commissioning.

Exclusions

The Company shall not be liable for:

- (a) the deductible stated in the Schedule to be borne by the Insured in any one occurrence; if more than one item is lost or damaged in one occurrence, the Insured shall not, however, be called upon to bear more than the highest single deductible applicable to such items;
- (b) loss or damage due to electrical or mechanical breakdown, failure, breakage or derangement, freezing of coolant or other fluid, defective lubrication or lack of oil or coolant, but if as a consequence of such breakdown or derangement an accident occurs causing external damage, such consequential damage will be indemnifiable;
- (c) loss of or damage to replaceable parts and attachments such as bits, drills, knives or other cutting edges, saw blades, dies, moulds, patterns, pulverising and crushing surfaces, screens and sieves, ropes, belts, chains, elevator and conveyor bands, batteries, tyres, connecting wires and cables, flexible pipes, jointing and packing material regularly replaced;
- (d) loss or damage due to explosion of any boiler or pressure vessel subject to internal steam or fluid pressure or of any internal combustion engine;
- (e) loss of or damage to vehicles designed and licensed for general road use unless these vehicles are exclusively used on construction sites;
- (f) loss of or damage to waterborne vessels or craft;
- (g) loss or damage due to total or partial immersion in tidal waters;
- (h) loss or damage whilst in transit unless otherwise agreed by endorsement;
- (i) loss or damage as a direct consequence of the continual influence of operation (e.g. wear and tear, corrosion, rust, deterioration due to lack of use and normal atmospheric conditions);
- (j) loss or damage occurring whilst any insured item is undergoing a test of any kind or is being used in any manner or for any purpose other than that for which it was designed;
- (k) loss of or damage to plant and/or machinery working underground unless otherwise agreed by endorsement;
- (l) loss or damage directly or indirectly caused by, or arising out of, or aggravated by war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, riot, strike, lock-out, civil commotion, military or usurped power, a group of malicious persons or persons acting on behalf of or in connection with any political organisation, conspiracy, confiscation, commandeering, requisition or destruction or damage by order of any government de jure or de facto or by any public authority;
- (m) loss or damage directly or indirectly caused by, or arising out of, or aggravated by nuclear reaction, nuclear radiation or radioactive contamination;
- (n) loss or damage due to any faults or defects existing at the time of commencement of this Policy within the knowledge of the Insured or his representatives, whether such faults or defects were known to the Company or not;
- (o) loss or damage directly or indirectly caused by, or arising out of, or aggravated by the wilful act or wilful negligence of the Insured or his representatives;
- (p) loss or damage for which the supplier or manufacturer is responsible either by law or under contract;

(q) consequential loss or liability of any kind or description;

(r) loss or damage discovered only at the time of taking an inventory or during routine servicing;

(s) loss or damage directly or indirectly caused by, or arising out of, or aggravated by earthquake, volcanic eruption or subterranean fire.

In any action, suit or other proceeding where the Company allege that by reason of the provisions of exclusions (l)-(p) above any loss, destruction or damage is not covered by this Policy, the onus of proving that such loss, destruction or damage is covered shall be upon the Insured.

Provisions

Memo 1

Sum Insured

It is a requirement for the cover provided under this Policy that the sum insured shall not be less than the cost of replacement of the insured items by new items of the same kind and same capacity, which shall mean their replacement costs including e.g. freight, customs duties and dues, if any, and erection costs.

If the sum insured is less than the amount required to be insured, the Company will pay only in such proportion as the sum insured bears to the amount required to be insured. Every item if more than one shall be subject to this condition separately.

Memo 2

Basis of Loss Settlement

In the event of any loss or damage the basis of any settlement under this Policy shall be as follows:

- (a) In cases where damage to an insured item can be repaired, the Company will pay expenses necessarily incurred to restore the damaged item to its former state of serviceability plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs as well as ordinary freight to and from a repair shop, customs duties and dues, if any, to the extent such expenses have been included in the sum insured. If the repairs are executed at a workshop owned by the Insured, the Company will pay the cost of materials and wages incurred for the purpose of the repairs plus a reasonable percentage to cover overhead charges.

No deduction shall be made for depreciation in respect of parts replaced, but the value of any salvage shall be taken into account. All damage which can be repaired shall be repaired but if the cost of repairs as detailed hereinabove equals or exceeds the actual value of the insured item immediately before the occurrence of the damage, the settlement shall be made on the basis provided for in (b) below.

- (b) In cases where an insured item is totally destroyed, the Company will pay the actual value of the item immediately before the occurrence of the loss, including costs for ordinary freight, erection, customs duties and dues, if any, to the extent such expenses have been included in the sum insured, such actual value to be calculated by deducting proper depreciation from the replacement value of the item. The value of any salvage shall be taken into account.

Any extra charges incurred for overtime, night-work, work on public holidays, or express freight, shall be covered by this Policy only if especially agreed by endorsement.

The costs of any alterations, additions, improvements or overhauls shall not be recoverable under this Policy.

The costs of any provisional repairs will be borne by the Company if such repairs constitute part of the final repairs and do not increase the total repair expenses.

The Company will make payments only after being satisfied by production of the necessary bills and documents that the repairs have been effected or replacement has taken place, as the case may be.

Average

Memo 1 contains a provision that could make this Policy subject to Average.

The meaning of subject to Average:

- 1 This insurance policy contains a provision making it 'subject to Average'.
- 2 That provision will have effect only if the property insured under the policy is underinsured at the time of loss.
- 3 If the property insured under the Policy is underinsured at the time of loss, the following rules apply:
 - (a) if you suffer a total loss, the provision will have no effect;
 - (b) if you suffer a partial loss, the maximum amount that you may recover will bear the same proportion to your actual loss as the amount for which the property is insured bears to the full value of the property;
 - (c) whatever your loss, in no case will you be entitled to recover more than the amount for which the property is insured, e.g your property is worth \$20,000. You insured it for \$10,000. You suffer a loss of \$5,000. If your policy is 'subject to Average', the maximum amount that you may recover will be \$2,500.

Conditions

The Schedule shall be deemed to be incorporated in and form part of this Policy and the expression 'this Policy' wherever used in this contract shall be read as including the Schedule. Any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear such meaning wherever it may appear.

- 1** The due observance and fulfilment of the terms of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the proposal made by the Insured shall be a condition precedent to any liability of the Company.
- 2** The Insured shall at his own expense take all reasonable precautions and comply with all reasonable recommendations of the Company to prevent loss or damage and comply with statutory requirements and manufacturers' recommendations.
- 3**
 - (a) Representatives of the Company shall at any reasonable time have the right to inspect and examine the risk and the Insured shall provide the representatives of the Company with all details and information necessary for the assessment of the risk.
 - (b) The Insured shall immediately notify the Company by telegram and in writing of any material change in the risk and cause at his own expense, such additional precautions to be taken as circumstances may require, and the scope of cover and/or premium shall, if necessary, be adjusted accordingly. No material alteration shall be made or admitted by the Insured whereby the risk is increased, unless the continuance of the cover provided under this Policy be confirmed in writing by the Company.
- 4** In the event of any occurrence which might give rise to a claim under this Policy, the Insured shall:
 - (a) Immediately notify the Company by telephone or telegram as well as in writing, giving an indication as to the nature and extent of loss or damage;
 - (b) Take all reasonable steps within his power to minimise the extent of the loss or damage;
 - (c) Preserve the parts affected and make them available for inspection by a representative or surveyor of the Company;
 - (d) Furnish all such information and documentary evidence as the Company may require;
 - (e) Inform the police authorities in case of loss or damage due to theft or burglary.

The Company shall not in any case be liable for any loss or damage of which no notice has been received by the Company within 14 days of its occurrence.

Upon notification being given to the Company under this condition, the Insured may carry out the repairs or replacement of any minor damage; in all other cases a representative of the Company shall have the opportunity of inspecting the loss or damage before any repairs or alterations are effected. If a representative of the Company does not carry out the inspection within a period of time which could be considered adequate under the circumstances, the Insured shall be entitled to proceed with the repairs or replacement.

Nothing contained herein shall prevent the Insured from taking such steps as are absolutely necessary for the upkeep of operations at the respective construction site.

The liability of the Company under this Policy in respect of any item sustaining damage shall cease if said item is not repaired properly without delay.

- 5** The Insured shall at the expense of the Company do and concur in doing and permit to be done all such acts and things as may be necessary or required by the Company in the interest of any right or remedies or of obtaining relief or indemnity from parties (other than those insured under this Policy) to which the Company shall be or would become entitled or subrogated upon their paying for or making good any loss or damage under this Policy, whether such acts and things shall be or become necessary or required before or after the Insured's indemnification by the Company.
- 6** If the proposal or declaration of the Insured is not true in any material respect, or if any claim made is fraudulent or substantially exaggerated, or if any false declaration or statement is made in support thereof, then this Policy shall be void and the Company shall not be liable to make any payment hereunder.
- 7** This Policy may be terminated at the request of the Insured at any time, in which case the Company will retain the customary short-period rate for the time this Policy has been in force. This Policy may equally be terminated at the option of the Company by seven days' notice to that effect being given to the Insured, in which case the Company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of cancellation less any reasonable inspection charges the Company may have incurred.
- 8** It is at a time any claim arises under this Policy there be any other insurance covering the same loss or damage, the Company shall not be liable to pay or contribute more than their rateable proportion of any claim for such loss or damage.