

Introduction

Whereas the Insured named in the Schedule hereto has made to the Company (hereinafter called 'the Insurers') a written proposal by completing a questionnaire which together with any other statements made in writing by the Insured for the purpose of this Policy is deemed to be incorporated herein.

Now this policy of insurance witnesseth that subject to the Insured having paid to the Insurers the premium mentioned in the Schedule and subject to the terms, exclusions, provisions and conditions contained herein or endorsed hereon the Insurers will indemnify the Insured in the manner and to the extent hereinafter provided.

Section 1: Material damage

The Insurers hereby agree with the Insured that if at any time during the period of cover the items or any part thereof entered in the Schedule 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 Insurers 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 respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in any one event the limit of indemnity where applicable and not exceeding in all the total sum expressed in the Schedule as insured hereby.

The Insurers will also reimburse the Insured for the cost of clearance of debris following upon any event giving rise to a claim under this Policy provided a separate sum therefore has been entered in the Schedule.

Section 1: Special exclusions

The Insurers shall not, however, be liable for:

- 1 the deductible stated in the Schedule to be borne by the Insured in any one occurrence;
- 2 consequential loss of any kind or description whatsoever including penalties, losses due to delay, lack of performance, loss of contract;
- 3 loss or damage due to faulty design, defective material or casting, bad workmanship other than faults in erection;
- 4 wear and tear, corrosion, oxidation, encrustation;
- 5 loss of or damage to files, drawings, accounts, bills, currency, stamps, deeds, evidences of debt notes, securities, cheques, packing materials such as cases, boxes, crates;
- 6 loss discovered only at the time of taking an inventory;
- 7 loss of or damage to surrounding property except as provided in memo 4;
- 8 earthquake, volcanic eruption or subterranean fire.

Section 1: Provisions

Memo 1

Sums insured

It is a requirement of this insurance that the sums insured stated in the Schedule (under items 1 and 2) shall not be less than the full value of each item at the completion of the erection, inclusive of freight, customs duties, dues, erection cost, and the Insured undertakes to increase or decrease the amounts of insurance in the event of any material fluctuation in the level of wages or prices provided always that such increase or decrease shall take effect only after the same has been recorded on the Policy by the Insurers.

If, in the event of loss or damage, it is found that the sums insured are less than the amounts required to be insured, then the amount recoverable by the Insured under this Policy shall be reduced in such proportion as the sums insured bear to the amounts required to be insured. Every object and cost item is subject to this provision separately.

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 insure 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.

Memo 2

Basis of settlement

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

- (a) in the case of damage which can be repaired the cost of repairs necessary to restore the items to their condition immediately before the occurrence of the damage less salvage, or
- (b) in the case of a total loss – the actual value of the items immediately before the occurrence of the loss less salvage,

however, only to the extent the costs claimed had to be borne by the Insured and to the extent they are included in the sums insured and provided always that the provisions and conditions have been complied with.

The Insurers 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. All damage which can be repaired shall be repaired, but if the cost of repairing any damage equals or exceeds the value of the items immediately before the occurrence of the damage, the settlement shall be made on the basis provided for in (b) above.

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

The cost of any alterations, additions and/or improvements shall not be recoverable under this Policy.

Memo 3

Extension of cover

- 1 Extra charges for overtime, nightwork, work on public holidays, express freight and air freight are covered by this Insurance only if an amount is entered in the Schedule.
- 2 Loss or damage to the contract works during the maintenance period specified in the Schedule:
 - (a) caused by the Insured Contractor(s) in the course of the operations carried out for the purpose of complying with the obligations under the maintenance provisions of the contract;
 - (b) occurring during the maintenance period provided such loss or damage was caused on the site during the period of cover.
- 3 Loss or damage of all materials to be incorporated in the contract works and for which the Insured is responsible whilst at any situation in New Zealand or in transit in New Zealand to the contract site.

Memo 4

Surrounding property

Loss of or damage to property located on or adjacent to the site and belonging to or held in care, custody or control of the Principal(s) or the Contractor(s) shall only be covered if occurring in direct connection with the erection, construction or testing of the items insured under section 1 and happening during the Period of Cover, and provided that a separate sum therefore has been entered in the Schedule. This cover does not apply to construction/erection machinery and construction/erection plant and equipment.

General exclusions

The Insurers will **not** indemnify the Insured in respect of loss, damage or liability directly or indirectly caused by or arising out of or aggravated by:

- (a) 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;
- (b) nuclear reaction, nuclear radiation or radioactive contamination;
- (c) wilful act or wilful negligence of the Insured or of his representatives;
- (d) cessation of work whether total or partial.

In any action, suit or other proceeding where the Insurers allege that by reason of the provisions of exclusion (a) above any loss, destruction, damage or liability is not covered by this Insurance the burden of proving that such loss, destruction, damage or liability is covered shall be upon the Insured.

Period of cover

The liability of the Insurers shall commence, notwithstanding any date to the contrary specified in the Schedule, directly upon commencement of work or after the unloading of the items entered in the Schedule at the site and shall continue until immediately after taking over or after the first test operation or test loading is completed whatever is the earlier, but not beyond four weeks (unless otherwise agreed in writing) from the date of commencement of the test, if, however, a part of a plant or one or several machine(s) is/are tested and/or put into operation or taken over, the cover for that particular part of the plant or machine(s) and any liability resulting therefrom ceases whereas the cover continues for the remaining parts.

In the case of second-hand items, the Insurance hereunder shall, however, cease immediately on the commencement of the test.

At the latest the Insurance shall expire on the date specified in the Schedule. Any extensions of the Period of Insurance are subject to the prior written consent of the Insurers.

General conditions

- 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 questionnaire and proposal made by the Insured shall be a condition precedent to any liability of the Insurers.
- 2 The Schedule and the section(s) 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 and the section(s). Any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule or of the section(s) shall bear such meaning wherever it may appear.
- 3 The Insured shall at his own expense take all reasonable precautions and comply with all reasonable recommendations of the Insurers to prevent loss, damage or liability and comply with statutory requirements and manufacturers' recommendations.
- 4 (a) Representatives of the Insurers shall at any reasonable time have the right to inspect and examine the risk and the Insured shall provide the representatives of the Insurers with all details and information necessary for the assessment of the risk.
(b) The Insured shall immediately notify the Insurers by facsimile 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 insurance be confirmed in writing by the Insurers.

- 5 In the event of any occurrence which might give rise to a claim under this Policy, the Insured shall:
 - (a) immediately notify the Insurers by telephone or facsimile as well as in writing, giving an indication as to the nature and extent of loss or damage;
 - (b) take all 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 Insurers;
 - (d) furnish all such information and documentary evidence as the Insurers may require;
 - (e) inform the police authorities in case of loss or damage due to theft or burglary.

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

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

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

- 6 The Insured shall at the expense of the Insurers do and concur in doing and permit to be done all such acts and things as may be necessary or required by the Insurers in the interest of any rights or remedies, or of obtaining relief or indemnity from parties (other than those insured under this Policy) to which the Insurers 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 Insurers.
- 7 If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted) such difference shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators, one to be appointed in writing by each of the parties, within one calendar month after having been required in writing so to do by either of the parties or, in case the arbitrators do not agree, of any umpire to be appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings. The making of an award shall be a condition precedent to any right of action against the Insurers.
- 8 If a claim is in any respect fraudulent, or if any false declaration is made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy, or if a claim is made and rejected and no action or suit is commenced within three months after such rejection or, in case of arbitration taking place as provided herein, within three months after the arbitrator or arbitrators or umpire have made their award, all benefit under this Policy shall be forfeited.
- 9 If at the time any claim arises under the Policy there be any other insurance covering the same loss, damage or liability the Insurers shall not be liable to pay or contribute more than their rateable proportion of any claim for such loss, damage or liability.