



## **Piers, Wharves & Docks: Insuring Agreement Wording**

This is a legally binding insurance contract between you and us, incorporating in full the application form signed by you. We will provide the insurance coverage described in this insuring agreement, in return for payment to us of the premium due and compliance by covered persons with the provisions, conditions and warranties of this insuring agreement.

### **Definitions**

- a) 'You and your' refer to the insured named on the declarations page and any person who possesses any legal or beneficial interest in any corporation, trust or entity either declared as the owner of the Covered Property or as an additional assured.
- b) 'We, us and our' refer to the insurers named on the declarations page or accompanying schedule of insurers.
- c) Words of a masculine gender are deemed to encompass the female gender and vice versa. Words in the singular are deemed to encompass the plural and vice versa.
- d) 'Deductible' is the first amount of any claim, which must be paid by you. If a deductible is applicable to any section of your insuring agreement the amount will be shown on the declarations page and this amount will be deducted from the amount payable on each admissible claim.
- e) 'Family' means any person related to you by blood, marriage or adoption, including wards and foster children.
- f) 'Named Windstorm' damage is damage relating to or resulting from a named windstorm or any numbered tropical weather pattern from the time the named windstorm or numbered tropical weather pattern impacts the area and until 72 hours later. The area of the named windstorm or tropical weather pattern is an area encompassed by a circle of radius not exceeding 150 nautical miles from the path of the storm's forward travel.

### **Section A: Physical Property**

If a sum insured is shown for Section A of the insuring agreement declaration page, we provide coverage for sudden accidental physical loss of, or sudden accidental physical damage to the Covered Property at the location as detailed in the Policy Schedule which occurs during the period of this insuring agreement and within the limits set out in the insuring agreement declarations page, subject to the insuring agreement provisions, conditions, warranties, deductibles and exclusions.

Covered Property:

- i) Floating or fixed piers, wharfs, docks, platforms, gangplanks, pilings, ground tackle, moorings and buoys
- ii) Anchors and floats used with floating docks
- iii) Electrical wiring or plumbing which is permanently fixed to the pier, wharf or dock
- iv) Sea walls, bulkheads, breakwater structures and/or jetties

### Exclusions to Covered Property:

- i) Buildings, storage sheds or tackle boxes except as may be specifically described and accepted when such structures are permanently located on covered property such as floating or fixed piers, wharfs, docks or platforms.
- ii) Fuel pumps or storage tanks
- iii) Boat lifts, railways, travel lifts or cranes  
(Whether attached to the pier, wharf, dock or not)

### Covered Causes of Loss:

We will pay all losses as a result of direct physical loss to covered property except as a result of direct or indirect causes of loss as detailed in the exclusions below.

### Exclusions to Covered Cause of Loss:

- i) Enforcement of any ordinance or law regulating the use, construction, repair or demolition of property including debris removal expense.
- ii) Volcanic eruption, explosion or effusion including airborne shock waves, ash dust particulate matter or lava flow. All volcanic eruptions that occur within any 72 hour period will constitute a single occurrence.
- iii) Seizure or destruction of property by order of governmental authority or as a consequence of governmental action.
- iv) Earthquake, earth movement, subsidence.
- v) For loss, damage or expense caused by or resulting from exceeding the registered or rated lifting capacity of any lift device, marine railway or dry-dock.
- vi) For any physical damage to that particular part on any property that is damaged because your work or the work of your employees was incorrectly performed on it.
- vii) For loss or damage caused by or resulting from wear and tear, gradual deterioration, depreciation, lack of maintenance, weathering, insects, mould, animal and marine life, rust or oxidation, wet or dry rot, inherent vice, freezing and ice (including heaving of pilings)
- viii) Collapse as a direct result of weight of ice or snow, settling, bulging, crackling, shrinkage, expansion or subsidence.
- ix) Any loss caused by or resulting from War or hostile or warlike action including terrorism; Strikes, Riots or Civil Commotion, any weapon employing atomic fission or fusion or radioactivity.
- x) Nuclear reaction or radiation or radioactive contamination, whether controlled or uncontrolled whether such loss be direct, indirect, proximate or remote.
- xi) Errors in design, workmanship or materials
- xii) Loss of use, delay or loss of markets
- xiii) Loss due to contamination or pollution
- xiv) Loss due to stranding or grounding of any floating property insured hereunder
- xv) Loss or damage caused intentionally by you and/or any member of your family.
- xvi) Damage existing prior to the inception date of this insuring agreement, whether you are aware of the same or otherwise.

### Conditions & Warranties for Section A:

- i) The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Policy Schedule.
- ii) We will not pay for loss in any occurrence until the amount of the adjusted loss before applying the applicable Limits of Insurance exceeds the Deductible shown in the Policy Schedule. We will then pay the amount of the adjusted loss in excess of the Deductible, up to the applicable Limit of Insurance.
- iii) The deductible shown under Section A of the insuring agreement policy schedule shall apply to each claim unless arising from a named windstorm when the deductible detailed below shall apply.

- iv) Loss or damage to the Covered Property arising from a named or numbered windstorm shall be subject to an increased deductible which shall apply to all claims and is shown on the Policy Schedule.
- v) The most we will pay for debris removal as a result of any one occurrence is \$100,000 or 10% of the Limit of Insurance shown in the schedule, whichever is the lesser. This amount to form part of the Limit of Insurance and will in no circumstances increase the limit beyond that shown in the Policy Schedule.

### **General Conditions & Warranties**

1. If a co-insurance percentage is shown on the declarations page, the following condition applies.

We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property. Instead we will determine the most we will pay using the following steps:

- a) Multiply the value of covered property at the time of loss by the Coinsurance percentage;
- b) Divide the Limit of Insurance of the property by the figure determined in step a);
- c) Multiply the total amount of loss, before the application of any deductible, by the figure determined in step b);
- d) Subtract the deductible from the figure determined in step c).

We will pay the amount determined in step d), or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

2. For loss to Covered Property we will pay the lesser of the following amounts

- a) The cost to repair, rebuild or replace on the same site with new materials of like kind and quality or;
- b) Actual cash value of the property damaged
- c) Our limit as noted on the Policy schedule attached hereto

This coverage does not cover any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair.

3. This insuring agreement incorporates in full your application for insurance and, together with any endorsements issued herein constitutes the entire contract between us. At your request, various provisions of this insuring agreement may be varied by us but only by our prior written agreement.

4. This insuring agreement may be cancelled by either you or us at any time, subject to 10 days prior written notice. If it is cancelled by us, we will pay you a pro rata return of premium. If it is cancelled by you, we shall pay you a short rate return of premium calculated at pro rata less 10%. Cancellations due to sale of the Covered Property or non-payment of premium, or non-payment of premium instalment to a premium financier are deemed cancellations by you. All policy fees are deemed earned at the inception of the policy.

5. If you have used a broker to effect coverage, it is hereby agreed that your brokers or any substituted brokers (whether surplus line approved or otherwise), shall be deemed to be exclusively the agents of you and not of us in any and all matters relating to, connected with or affecting this insurance. Any notice given or mailed by or on behalf of us to the said brokers in connection with or affecting this insurance, or its cancellation, shall be deemed to have been delivered to you.

6. It is warranted that covered persons must at all times comply with all laws and regulations, governing the use and or operation of the Covered Property.

7. If you give up your rights or our rights to recover damages from anyone who may be liable to you, denying us the benefit of the right of recovery, payment of any admissible loss under this insuring agreement shall be reduced by the amount we have been denied.

8. This contract is null and void in the event of non-disclosure or misrepresentation of a fact or circumstances material to our acceptance or continuance of this insurance. No action or inaction by us shall be deemed a waiver of this provision.

9. If any covered person has other insurance against risks covered by this insuring agreement, then this insurance shall be in excess over all other valid and collectible insurances.

10. Where any term herein is referred to as a 'warranty' or where any reference is made herein to the word 'warranted', the term shall be deemed a warranty and regardless of whether the same expressly provides that any breach will void this insuring agreement from inception, it is hereby agreed that any such breach will void this policy from inception.

11. Where two or more insurers subscribe to this insurance their obligations are several and not joint and are limited solely to the extent of their individual subscriptions. The insurers in such circumstances are not responsible for the subscription of any co subscribing insurer who for any reason does not satisfy all or part of its obligations hereunder.

#### **Your Duties In The Event Of A Loss**

- 1) Immediately take all possible steps to minimise the loss and protect the Covered Property from further loss. Failure to do so may invalidate your insurance coverage or reduce the amount of any claim hereunder.
- 2) Within 30 days of a loss giving rise to any claim hereunder give us written notification of the loss and its circumstances, this term is a condition precedent to our liability hereunder.
- 3) Comply with any reasonable request made of you, by us with regard to the loss.
- 4) Advise the Police, Coast Guard, or any appropriate authority of the loss and its circumstances.
- 5) Give us an opportunity to examine the damaged property before it is repaired or discarded.
- 6) Submit a claim form and/or statement describing the loss, together with two estimates of repair cost and/or records to substantiate the amount of the loss.
- 7) Neither assume obligation, nor admit liability without our written permission to do so.
- 8) Immediately forward to us any legal papers or notices received in connection with the loss
- 9) Cooperate with us in the investigation, defence or settlement of any loss and agree to be examined under oath if we so request.
- 10) Allow examination by physicians of our choice.
- 11) Assist us in obtaining copies of medical records and reports.
- 12) Give us a notarised statement or statutory declaration if we so request.
- 13) Give us a proof of loss and discharge of liability once the amount of the claim under this insuring agreement has been agreed with you.
- 14) Preserve any right of recovery from others. When we pay a loss, your right to recover becomes ours up to the amount of our payment together with any legal fees and expenses. You must also co-operate with us to recover the losses we may pay. Any amounts recovered from others belong to us up to the amount of our payment together with any legal fees and expenses.

#### **Service Of Suit, Choice Of Law And Forum**

It is hereby agreed that any dispute arising hereunder shall be adjudicated according to the substantive laws of the State of New York.

It is also hereby agreed that any dispute arising hereunder shall be subject to the exclusive jurisdiction of the Federal courts of the United States of America, in particular, the Federal District court within which you the Assured resides or the Federal District court within which your insurance agent resides.

It is further agreed that:

a) the Assured may serve process upon any senior partner in the firm of:

Mendes & Mount, LLP  
750 7<sup>th</sup> Avenue  
New York, NY 10019

and that in any suit instituted against any one of them upon this contract the Underwriters will abide by the final decision of the Court or any Appellate Court in the event of an appeal.

b) The above named are authorised and directed to accept service of process on behalf of Underwriters in all such suits and/or upon request of the Assured to give written undertaking to the Assured that they will enter a general appearance upon the Underwriter's behalf in the event such a suit shall be instituted.

Further, pursuant to any Statute of any State, Territory or District of the United States of America which makes provision therefore, Underwriters hereby designate the Superintendent, Commissioner or Directors of Insurance or any other officer specified for that purpose in the statute, or his successor or successors in office (The Officer) as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Assured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named as the person to whom the Officer is authorised to mail such process or true copy thereof.