



# Material Damage and Business Interruption Policy

## Material Damage and Business Interruption Policy Wording

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## DELTA PROPERTY INSURANCE LIMITED

### Material Damage and Business Interruption Policy

#### 1.0 OUR PROMISE TO YOU

In return for YOU agreeing to pay the required premium WE will provide YOU with the cover set out in this POLICY.

#### 2.0 IMPORTANT INFORMATION

##### 2.1 READING THIS POLICY

This POLICY is not a completed contract unless provided with a completed SCHEDULE which together shall be read as one contract.

Words and phrases appearing in capital letters have the meaning defined in the definitions section. In addition:

- a. The definitions apply to the plural and any derivatives of the words in capitals.
- b. The headings are for descriptive purposes only;
- c. "Person" includes individuals, partnerships, body corporates and associations;

If any portion of the POLICY is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

##### 2.2 ABOUT THE INSURERS – SEVERAL LIABILITY

This insurance is underwritten by Certain Underwriters at Lloyd's. Delta Property Insurance Limited is a Lloyd's Coverholder.

An insurer is liable only for the proportion of liability it has underwritten. An insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is an insurer otherwise responsible for any liability of any other insurer that may underwrite this POLICY.

The proportion of liability under this POLICY underwritten by an insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all members of the syndicate taken together) is shown in the SCHEDULE.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is an insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other insurer that may underwrite this contract.

YOU can obtain further details of the syndicate numbers and the proportions of this insurance for which each of the Lloyd's Underwriters is liable by requesting them from US.

## 2.3 THE FAIR INSURANCE CODE

Lloyd's is a member of the Insurance Council of New Zealand, and is committed to comply with the Council's Fair Insurance Code.

For further information on the Code, please visit [www.icnz.org.nz/regulation/fair-insurance](http://www.icnz.org.nz/regulation/fair-insurance)

## 2.4 COMPLAINTS AND DISPUTE RESOLUTION PROCESS

We view seriously any complaint made about OUR products or services and will deal with it promptly and fairly.

Any enquiry or complaint relating to this POLICY should be referred to US in the first instance by writing to OUR office for the attention of the Managing Director:

The Managing Director Delta  
Property Insurance Limited  
Level 8, 57 Fort Street  
Auckland 1010  
[andrew@deltainsurance.co.nz](mailto:andrew@deltainsurance.co.nz)

If this does not resolve the matter or YOU are not satisfied with the way a complaint has been dealt with, YOU can write to:

Lloyd's General Representative in New Zealand c/o  
Hazelton Law  
Level 29 Plimmer Towers 2  
– 6 Gilmer Terrace  
Wellington  
New Zealand

Email: [scott.galloway@hazelton.co.nz](mailto:scott.galloway@hazelton.co.nz)  
Tel: 04 472 7582

Or

Lloyd's Market Services  
Lloyd's  
One Lime Street  
London  
EC3M 7HA  
England

Email: [complaints@lloyds.com](mailto:complaints@lloyds.com)  
Tel: +44 (0)20 7327 5693

Where Lloyd's Underwriters' General Representative receives a complaint this will be acknowledged within three working days of receipt. The Lloyd's General Representative will forward details of the complaint to Lloyd's and will assist with liaison with YOU and US if required.

Upon receipt of the complaint, Lloyd's will forward it (via the London Broker) to the syndicate concerned. A response on behalf of the syndicate is required to be sent to YOU via Lloyd's within 14 days. Lloyd's will also send an acknowledgement to you and advise that YOUR complaint has been sent to the syndicate concerned for response.

When Lloyd's receives the syndicate's response, Lloyd's will forward it to YOU and will advise YOU of the steps Lloyd's can take to help resolve the complaint if YOU are dissatisfied with the syndicate's response. Lloyd's will provide you with the name and contact details of the person handling the complaint.

Thereafter Lloyd's will send written advice to YOU about the progress of the investigation of YOUR complaint.

Lloyd's will send YOU a final response within eight weeks from the date of the complaint or if there are problems with resolving the complaint within this time, the reasons for this and when it expects to finalize the matter.

If YOU are not satisfied with the final decision, YOU may wish to contact the Insurance and Financial Services Ombudsmen Scheme (IFSO). The IFSO is a free independent external disputes resolution service provided to customers to review and resolve complaints where WE have been unable to satisfy YOUR concerns. YOU can contact the IFSO as follows:

The Insurance and Financial Services Ombudsman Scheme  
PO BOX 10-845  
Wellington 6143  
T: 0800 888 202 or +64 (09) 499 7612  
E: info@ifso.nz  
W: www.iombudsman.org.nz

## 2.5 GOVERNING LAW AND JURISDICTION

The law of New Zealand applies to this POLICY and the New Zealand Courts have exclusive jurisdiction.

Any summons, notice or process to be served upon US for the purpose of instituting any legal proceedings against US in connection with this POLICY must be served upon:

Lloyd's General Representative in New Zealand  
c/o Hazelton Law  
Level 29 Plimmer Towers  
2 – 6 Gilmer Terrace  
Wellington  
New Zealand

## 3.0 YOUR OBLIGATIONS UNDER THIS POLICY

### 3.1 DUTY OF DISCLOSURE

Before YOU take out insurance with US, YOU have a duty to tell US of everything that YOU know, or could reasonably be expected to know, that may affect OUR decision to insure YOU and on what terms. If YOU are not sure whether something is relevant YOU should inform US anyway.

YOU have the same duty to inform US of those matters before YOU renew, extend, vary, or reinstate YOUR Policy. The duty applies until the POLICY is entered into, or where relevant, renewed, extended, varied or reinstated. If anything changes between when the answers are provided to US or disclosures are made, YOU need to tell US.



However, YOU are not required to disclosure matters that:

- reduce the risk;
- are common knowledge;
- WE know or, in the ordinary course of OUR business, ought to know; or
- WE have indicated WE do not want to know.

If YOU do not comply with YOUR duty of disclosure, WE may:

- Refuse to pay all or part of YOUR claim;
- cancel the POLICY; or
- cancel your insurance from the start date of the POLICY.

After the POLICY is entered into, ongoing disclosure obligations can apply. These are set out in the POLICY.

### **3.2 ALTERATION OF RISK**

YOU must notify us as soon as possible if you become aware of any change in the nature of the occupation, use or otherwise of the PROPERTY. Unless such change is notified to US prior to the happening of any circumstances giving rise to a claim, YOU may not be covered in relation to the INSURED PROPERTY affected by the increased risk.

However, no notification is required to:

- a. do such work and to make such changes in the use or occupancy of the SITUATION as is usual and/or incidental to the BUSINESS.
- b. Carry out any alterations and/or repairs to any INSURED PROPERTY provided structural alterations and/or repairs are reported to US within a reasonable time and any reasonable additional premium for the increased risk is paid.
- c. Shut down or cease operations and for individual buildings to remain vacant or unoccupied for up to 90 days.

### **3.3 FALSE OR FRAUDULENT CLAIM**

YOU must make sure that all statements are true (whether given by YOU or any other person) when YOU apply for this insurance, YOU notify US regarding any change in circumstance and/or YOU make any claim under the POLICY.

If YOU make any statement to US that is false in any way, WE may:

- Refuse to pay all or part of YOUR claim;
- cancel the POLICY; or
- cancel your insurance from the start date of the POLICY.

For the purposes of this condition, if the INSURED comprises more than one person or corporation, each INSURED will be treated as having been issued with a separate POLICY.

### **3.4 NOTIFICATION OF CLAIMS**

If any EVENT is likely to give rise to a claim under the POLICY YOU must:

- a. take prompt steps to avoid or minimise further LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS;
- b. notify US immediately by contacting OUR nominated claims administrator Cunningham Lindsey and Company by post, email or telephone as follows:

Delta Insurance Property Claims

C/- Sedgwick New Zealand Limited

Level 5, Metlife Care Building

Cnr Kent & Crowhurst Streets

PO Box 335

Shortland Street

Auckland 1140

Email: [propertyclaims@deltainsurance.co.nz](mailto:propertyclaims@deltainsurance.co.nz)

Phone: +64 0800 51 33 77

- c. Provide US with all information as WE reasonably require in connection with the claim;
- d. If a criminal act is suspected, notify the police.

## SECTION 1: MATERIAL DAMAGE

### 4.0 INSURING CLAUSE – WHAT YOU ARE COVERED FOR

YOU are covered for LOSS OR DAMAGE to INSURED PROPERTY during the PERIOD OF INSURANCE due to an EVENT.

The maximum amount payable by US during the PERIOD OF INSURANCE shall not exceed the TOTAL SUM INSURED stated in the SCHEDULE.

### 5.0 ADDITIONAL COVER TO SECTION 1

Where the SCHEDULE contains a SUB-LIMIT in relation to any additional cover referred to below then OUR liability shall not exceed that SUB-LIMIT in respect of the additional cover.

#### 5.1 ACTS OF CIVIL AUTHORITIES

YOU are covered for all acts of destruction undertaken at the order of any lawfully constituted civil authority for the prevention or restriction of LOSS OR DAMAGE covered by this POLICY.

#### 5.2 ALTERNATIVE RESIDENTIAL ACCOMMODATION

Where any residential accommodation insured under this POLICY is rendered uninhabitable as a result of LOSS OR DAMAGE covered by this POLICY, YOU are covered for the reasonable costs and expenses of alternative accommodation necessarily incurred by YOU or the occupant (being YOUR employee only) provided that:

- a. The costs and expenses are not otherwise insured;
- b. The period for which the costs and expenses are covered will be limited to the period reasonably required for reinstatement of the INSURED PROPERTY;
- c. WE may deduct a reasonable allowance for costs and expenses reduced or avoided as a result of the INSURED PROPERTY being rendered uninhabitable; and
- d. OUR liability for such costs and expenses is limited to \$10,000 or an amount equal to 25% of the cost of reinstating any one dwelling or residential unit following LOSS OR DAMAGE, whichever is the lesser.
- e. OUR liability for such costs and expenses arising out of one EVENT is included in the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

#### 5.3 CAPITAL ADDITIONS COVER

YOU are covered for LOSS OR DAMAGE to:

- a. Alterations, additions (including additional buildings) and improvements to INSURED PROPERTY; and
- b. Property acquired by YOU after the commencement of the PERIOD OF INSURANCE up to the SUB-LIMIT stated in the SCHEDULE. Provided that YOU advise US of any such alterations, additions, improvements or acquisitions (other than STOCK) and YOU pay any additional premium and associated additional statutory levies and taxes required by US for this additional cover.

YOU are not covered for any appreciation in value of the INSURED PROPERTY which is not due to a physical alteration, addition or improvement.

#### **5.4 CHANGE IN TEMPERATURE**

YOU are covered for LOSS OR DAMAGE resulting from a change in temperature in connection with LOSS OR DAMAGE to any INSURED PROPERTY following an EVENT, or as a result of accidental or malicious disconnection of the power supply, up to the SUB-LIMIT shown in the SCHEDULE. This includes any reasonable costs YOU incur in the removal and/or storage of such property at alternative premises.

Material Damage Exclusion 7.10(d) does not apply to this additional cover.

#### **5.5 COMPUTER BREAKDOWN**

YOU are covered for any breakdown of YOUR computer or electronic systems up to the SUB-LIMIT shown in the SCHEDULE.

Material Damage Exclusions 7.11 and 7.14 do not apply to this additional cover.

#### **5.6 COST OF REWRITING RECORDS**

YOU are covered for all reasonable costs and expenses YOU incur up to the SUB-LIMIT stated in the SCHEDULE replacing or restoring office and business records that have been LOST OR DAMAGED which shall include documents, specifications, plans, books of account, and ELECTRONIC DATA.

#### **5.7 DEMOLITION AND OTHER COSTS**

YOU are covered for the reasonable costs necessarily incurred for the following purposes as a result of LOSS OR DAMAGE to INSURED PROPERTY:

- a. demolishing, dismantling, shoring up or propping of INSURED PROPERTY;
- b. the removal and disposal of debris and foreign matter (including the transport and storage costs of property whether damaged or undamaged); and
- c. temporary repairs to the INSURED PROPERTY that has been LOST OR DAMAGED, including the erection and maintenance of street and/or pavement hoardings and/or scaffolding.

Provided that OUR total liability is not increased beyond the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

YOU are not covered for any sums that YOU become legally liable to pay by way of compensation or other damages consequent upon pollution or contamination of property.

#### **5.8 EXPEDITING COSTS**

YOU are covered for the additional costs of express freight, air freight and overtime labour that YOU reasonably incur for the purpose of expediting the reinstatement of any INSURED PROPERTY.

Provided that OUR total liability is not increased beyond the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

#### **5.9 GENERAL AVERAGE**

Where INSURED PROPERTY is LOST OR DAMAGED in transit YOU are covered for any general average and salvage charges payable in accordance with any freight contract.

#### **5.10 GRADUAL DAMAGE**

YOU are covered for LOSS OR DAMAGE to INSURED PROPERTY due to gradual damage, mildew, mould or rot caused by water which accidentally leaks, overflows, or is discharged from any piping or water system installed at the

SITUATION up to the SUB-LIMIT shown in the SCHEDULE. Provided that action is taken to minimise the LOSS OR DAMAGE and to prevent any further LOSS OR DAMAGE as soon as the LOSS OR DAMAGE is apparent.

Material Damage Exclusion 7.10 (b) does not apply to this additional cover.

#### **5.11 HAZARDOUS SUBSTANCE EMERGENCY**

YOU are covered for any charge(s) which the New Zealand Fire Service is authorised to make against YOU in respect of any Hazardous Substance Emergency arising out of or in connection with any INSURED PROPERTY, as a result of any LOSS OR DAMAGE or threat of LOSS OR DAMAGE to INSURED PROPERTY.

"Hazardous Substance Emergency" has the same meaning as defined in the Fire Service Act 1975 or any subsequent amending legislation.

#### **5.12 KEYS AND LOCKS**

YOU are covered for the reasonable costs necessarily incurred in altering or replacing locks and keys (including electronic access devices) and combinations where keys and/or combinations are stolen or lost, or if YOU have reasonable grounds to believe these may have been stolen or duplicated without proper authority, together with the cost of opening safes and strong-rooms as a result of loss of keys up to the SUB-LIMIT specified in the SCHEDULE.

#### **5.13 LANDSLIP AND SUBSIDENCE**

YOU are covered for LOSS OR DAMAGE to any BUILDING shown in the SCHEDULE caused by landslip or subsidence during the PERIOD OF INSURANCE up to the SUB-LIMIT shown in the SCHEDULE.

Material Damage Exclusion 7.8 does not apply to this additional cover.

#### **5.14 MECHANICAL FAILURE**

YOU are covered for LOSS OR DAMAGE to INSURED PROPERTY due to mechanical or electrical breakdown, derangement or failure (motors not exceeding 5kw) up to the SUB-LIMIT shown in the SCHEDULE. This SUB-LIMIT applies to the combined Material Damage and Business Interruption LOSS.

#### **5.15 MONEY**

YOU are covered for LOSS OR DAMAGE to MONEY up to the SUB-LIMIT shown in the SCHEDULE.

#### **5.16 NATURAL DISASTER DAMAGE**

Where any INSURED PROPERTY detailed in the SCHEDULE comprises residential buildings or personal property (both as defined in the Earthquake Commission Act 1993), YOU are covered for NATURAL DISASTER DAMAGE, provided that:

- a. the Earthquake Commission (EQC) admits liability, either in full or in part, for such NATURAL DISASTER DAMAGE; and
- b. OUR liability:
  - i. shall not apply to the amount payable by EQC; and
  - ii. shall not exceed the difference between the amount that the EQC pays or ought to pay, and the SUM INSURED.

### 5.17 PROFESSIONAL FEES

YOU are covered for professional fees reasonably incurred as a result of LOSS OR DAMAGE to INSURED PROPERTY up to the SUB-LIMIT specified in the SCHEDULE. Provided that OUR total liability is not increased beyond the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

YOU are not covered for any costs associated with the preparation or proving of claims made under this section of the POLICY.

### 5.18 PROPERTY IN COURSE OF CONSTRUCTION

YOU are covered for any property that YOU OWN, will own, occupy or will occupy in the course of installation, construction, demolition, erection, or testing.

The SUB-LIMIT shown in the SCHEDULE includes allowances for:

- (a) Professional Fees,
- (b) Demolition Costs,
- (c) Escalation in Cost during the building and rebuilding periods.

The INSURED PROPERTY under this clause will also be insured in transit and elsewhere in New Zealand.

YOU shall declare to the US the value of such works as soon as YOU become aware of the necessity to do so at which a time a suitable premium will be paid if required by US.

This clause provides cover for contracts where the completed value of the works does not exceed the SUB-LIMIT shown in the SCHEDULE.

The SUB-LIMIT stated is additional to the SUM INSURED stated in the SCHEDULE unless otherwise Specified.

### 5.19 PROTECTION COSTS

YOU are covered for any costs reasonably incurred as a direct result from fighting or controlling any EVENT that involves or threatens to involve INSURED PROPERTY. Provided that OUR total liability is not increased beyond the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

### 5.20 REDUNDANT PLANT

YOU are covered for any undamaged or salvaged plant as if such plant had suffered LOSS OR DAMAGE where:

- a. The plant forms part of the same interdependent system or line, or
- b. Spare parts held exclusively for the LOST OR DAMAGED plant, or other plant in that system or line, are rendered redundant due to LOSS OR DAMAGE to other INSURED PROPERTY.

The redundant plant and parts shall be treated as if the LOSS OR DAMAGE had occurred from the same EVENT that caused the LOSS OR DAMAGE covered by this POLICY. Any claim for redundant plant shall be net of any salvage value from the redundant plant or parts.

This additional cover does not apply where YOU have elected to carry out replacement by changing the nature or use of the INSURED PROPERTY.



### 5.21 RELEASE OF LIABILITY

Where YOU are required by legislation or by contractual agreement to release from liability:

- a. the Crown;
- b. any Government corporation;
- c. any municipal or Local Authority
- d. the New Zealand Fire Service Commission;
- e. any fire protection equipment supplier approved by the Insurance Council of New Zealand Inc;
- f. any lift maintenance engineers;
- g. any oil company;
- h. any party storing goods for, or leasing property to, YOU; or
- i. any other party to an agreement which has been declared to and accepted by US

in relation to LOSS OR DAMAGE covered by this POLICY, the release is allowed without prejudice to this POLICY and notwithstanding the subrogation condition of this POLICY. Provided that the waiver was made in writing before the LOSS OR DAMAGE occurred.

### 5.22 REWARDS

YOU are covered for any payment YOU make by way of a reward, provided that the payment contributed towards the protection and/or recovery of all or part of the INSURED PROPERTY LOST OR DAMAGED and that WE agreed to the terms of the reward prior to it being offered.

### 5.23 SALE OF BUILDINGS

YOU are covered for LOSS OR DAMAGE to any BUILDING included in the SCHEDULE which is for sale, and where an agreement to sell the interest in the BUILDING has not been fully completed and is not otherwise insured by or on behalf of the purchaser against such LOSS OR DAMAGE.

### 5.24 SUSTAINABLE REBUILDING COSTS

YOU are covered for additional costs YOU reasonably incur to upgrade BUILDING(S) with sustainable products up to 10% of the BUILDINGS SUM INSURED or \$100,000, whichever is greater, provided that:

- a. the BUILDING(S) has been DESTROYED;
- b. the BUILDING(S) is insured for Replacement Value as shown on the SCHEDULE;
- c. the BUILDING(S) is reinstated; and
- d. WE approve the sustainable products (approval will not be unreasonably withheld).

“**Sustainable Products**” means products that increase the efficiency of the BUILDING relating to the use of energy and/or water and rebuilding materials that reduce environmental impacts including (but not limited to) double glazing, solar water heating systems, environmentally friendly timber, rainwater collection tanks and water efficient interior plumbing. It does not include fire protection devices or systems, security devices or systems or natural hazard protection.

#### 5.25 TEMPORARY REMOVAL (excluding STOCK)

YOU are covered for all INSURED PROPERTY excluding STOCK whilst temporarily removed to any other premises in NEW ZEALAND (but excluding whilst in transit to and from the SITUATION).

The amount payable shall not exceed the amount which would have been payable had the LOSS OR DAMAGE occurred at the SITUATION.

#### 5.26 TRANSIT OF PROPERTY

YOU are covered for LOSS OR DAMAGE to INSURED PROPERTY (including STOCK) that is in transit up to the SUB-LIMIT shown in the SCHEDULE.

Where goods are destined for transit beyond New Zealand, cover under this POLICY ceases at the time goods pass over the ships rail or through air transport loading doors for overseas transit from any New Zealand port or airport, or at the time YOUR interests in the goods has ceased at a point of sale, whichever is the earlier.

#### 5.27 UNLAWFUL SUBSTANCES

YOU are covered for LOSS OR DAMAGE to an insured BUILDING or INSURED PROPERTY within a BUILDING as shown on the SCHEDULE, due to the manufacture, storage or distribution of any controlled drug as defined in the Misuse of Drugs Act 1975, if:

- a. the BUILDING is tenanted; and
- b. YOU or the person who manages the tenancy on YOUR behalf has met the **Landlord Obligations**.

Provided that the most WE will pay is \$25,000 for any one EVENT, up to a maximum of \$100,000 in the PERIOD OF INSURANCE.

“**Landlords Obligations**” means YOU or the person who manages the INSURED PROPERTY on YOUR behalf must:

- a. Exercise reasonable care in the selection of tenant(s) by obtaining at least satisfactory verbal or written references, and
- b. Complete an external and internal inspection of the property at a minimum of three monthly intervals and upon the change of every tenant(s), and
- c. Keep a written record of the outcome of each inspection, and provide a copy to US if a copy is requested.

#### 5.28 UTILITIES

YOU are covered for LOSS OR DAMAGE due to contamination or interruption of the supply of utilities such as telecommunications, water, gas, electricity where the EVENT causes LOSS OR DAMAGE to any INSURED PROPERTY.

## **6.0 BASIS OF SETTLEMENT – HOW WE WILL PAY YOU**

The basis upon which WE will pay YOU for LOSS OR DAMAGE to INSURED PROPERTY is as stated below.

For the purpose of determining the heading under which property is insured, WE agree to accept the designation under which such property has been entered into YOUR books of account.

### **6.1 BUILDINGS, CONTENTS AND OTHER PROPERTY**

Unless an alternative basis of settlement is shown in the SCHEDULE, WE will pay you the INDEMNITY VALUE for any INSURED PROPERTY not more particularly set out below, that is LOST OR DAMAGED during the PERIOD OF INSURANCE.

### **6.2 STOCK**

WE will pay YOU the replacement value of raw materials and finished goods plus any work in progress, labour or overhead charges that cannot be recovered due to the LOSS OR DAMAGE to STOCK.

In the event of a claim for LOSS OR DAMAGE to branded STOCK, such STOCK will only be sold with YOUR consent. Where YOU do not consent to the sale of branded STOCK, the salvage value shall be taken into account in the settlement of the claim.

### **6.3 COST OF REWRITING OF RECORDS**

WE will pay YOU the reasonable costs and expenses YOU incur for the replacement or restoration of office and business records which shall also include documents, specifications, plans, books of account, and ELECTRONIC DATA together with the costs of reproduction.

YOU are not covered for the value of the information contained in the records.

### **6.4 ELECTRONIC ITEMS**

WE will pay YOU the replacement value of the following INSURED PROPERTY where items are three years older or less:

- a. Cell phones, video data projectors, digital cameras;
- b. Other audio visual equipment;
- c. Portable computing devices and portable data storage devices.

### **6.5 MEDIA AND ELECTRONIC DATA**

WE will pay YOU the replacement cost of blank media (including the cost of any proprietary software and licensed software fees), plus the reasonable cost of transferring the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs associated with recreating, gathering or assembling such ELECTRONIC DATA.

If the media is not repaired, replaced or restored, WE will pay YOU the replacement cost of blank media.

WE will not pay any costs in relation to the value of the ELECTRONIC DATA to YOU or any other party, even if the ELECTRONIC DATA cannot be recreated, gathered or assembled.

## 6.6 WORKS OF ART

Where there is LOSS OR DAMAGE to INSURED PROPERTY comprising a WORK OF ART or ARTEFACT, WE may appoint an independent and suitably qualified valuer or restorer to determine whether the WORK OF ART or ARTEFACT can be restored to its pre-damage condition.

If the valuer or restorer determines that the WORK OF ART or ARTEFACT cannot be economically restored to its pre-damage condition, the WORK OF ART or ARTEFACT will be deemed DESTROYED. Its pre-damage value will be determined by the valuer, or providing the restorer is suitably qualified, by the restorer. WE will pay the pre-damage value less any salvage value of the damaged WORK OF ART or ARTEFACT.

If the valuer or restorer determines that the WORK OF ART or ARTEFACT can be economically restored to its pre-damage condition, WE will pay the cost of restoration, or if the restoration is not carried out, the restorer's reasonable estimate of the cost of restoration,

In the event of the total loss of any WORK(S) OF ART or ARTEFACT(S), that forms part of a set, WE will pay the cost of the complete set and YOU must give US the remainder of the set.

WE will not pay for any reduction in value due to a WORK OF ART or ARTEFACT having been damaged and restored.

The most WE will pay for a WORK OF ART or ARTEFACT is \$10,000 any one item or \$50,000 in total, unless a higher amount is shown in the SCHEDULE.

## 6.7 RESTORATION AND REPRODUCTION COSTS

WE will pay YOU all costs and expenses YOU reasonably and necessarily incur replacing, reinstating, repairing, restoring and/or reproducing proof materials which shall include but not be limited to print blocks, plates-lettering, films (positive or negative), artwork, typeset and/or paste-up.

The replacement, reinstatement, repair, restoration and/or reproduction shall be deemed to mean the restoration of the damaged property to a condition substantially the same as but not better or more extensive than its condition when new, or if destroyed its replacement by similar property in a condition substantially the same as but not better than the condition of the INSURED PROPERTY when new.

## 6.8 REINSTATEMENT

Where any item(s) of INSURED PROPERTY is insured for **reinstatement** it will be shown in the SCHEDULE. Whenever **reinstatement** cover applies, WE will indemnify YOU by **reinstating** the INSURED PROPERTY in accordance with the following the following definitions and Special Provisions.

### Definitions

1. **"reinstatement"** means:
  - a. where INSURED PROPERTY is damaged but not DESTROYED, the restoration of the damaged portion of the property to a condition substantially the same as, but not better or more extensive than, its condition when new using modern equivalent materials, skills and techniques that are readily available and including all costs incurred to comply with any Act of Parliament or Regulation.
  - b. where INSURED PROPERTY is lost or DESTROYED, replacement by an **equivalent building** or by **equivalent property** as the case may require.
2. **"equivalent building"** means a BUILDING which is as nearly as practicable the same as the BUILDING lost or DESTROYED, using modern equivalent materials, skills and techniques that are readily available and incorporating such alterations as are necessary to comply with any regulations that are in force when the LOSS OR DAMAGE occurs, but excluding all costs and expenses of whatsoever nature in connection with seismically strengthening INSURED PROPERTY to a level greater than its level before the LOSS OR DAMAGE.

Where an **equivalent building**:

- a. cannot be constructed, or
- b. is not suitable to YOUR reasonable requirements,

then with OUR consent (which will not be unreasonably withheld) WE will pay for another similar BUILDING provided that it is not more extensive than the BUILDING that has been lost or DESTROYED.

- 3. "**equivalent property**" means any other property as nearly as practicable the same as or equivalent to the property DESTROYED, having regard to the current state of technology, and having an equivalent capacity to that of the DESTROYED property, but not greater capacity unless property with an equivalent capacity is not available and the replacement property has the nearest to an equivalent capacity.

### Special Provisions

- 1. If WE request it, YOU must provide us with a written valuation which includes an estimate of the cost of reinstatement of the INSURED PROPERTY prepared and certified by a valuer acceptable to US.
- 2. The SUM INSURED under the POLICY in respect of each item will not be less than the amount of such estimate, and may be adjusted for renewal provided this is done within a two month period of the renewal date.
- 3. When INSURED PROPERTY is damaged but not DESTROYED, OUR liability shall not exceed the amount WE would have been called upon to pay for **reinstatement** if such property had been DESTROYED.
- 4. Where a BUILDING is DESTROYED, YOU may carry out the replacement by an **equivalent building** upon another site and in any manner suitable to YOUR requirements including a change in the nature and use of the BUILDING, provided that OUR liability does not exceed the cost which would have been incurred had **reinstatement** been carried out on the original site.
- 5. No payment will be made beyond the INDEMNITY VALUE:
  - a. If YOU elect not to **reinststate** the property;
  - b. If **reinstatement** is not commenced and carried out promptly;
  - c. Until the cost of **reinstatement** has been actually incurred.
- 6. All reasonable costs and expenses incurred in complying with REGULATIONS that are in force on the date that the LOSS OR DAMAGE occurs are included in the amount payable for **reinstatement** except for the following:
  - a. costs and expenses for any work which YOU had already been required to carry out by notice served prior to the happening of the LOSS OR DAMAGE; or
  - b. costs and expenses incurred in respect of undamaged property or undamaged portions of property other than foundations; or
  - c. costs and expenses of whatsoever nature in connection with seismically strengthening INSURED PROPERTY to a level greater than its level before the LOSS OR DAMAGE.
- 7. OUR liability in respect of any item of INSURED PROPERTY will not exceed the SUM INSURED for that item.

8. Foundations, BUILDINGS and/or major plant items which prove to be unsuitable for further use following LOSS OR DAMAGE and/or due to the action or regulations of any Municipal or Government or Local Authority or similar Body or due to the operation of any health or similar REGULATION shall be considered part of the LOST AND DAMAGED INSURED PROPERTY.

#### 6.9 DESTRUCTION OF UNDAMAGED PROPERTY

Where INSURED PROPERTY is insured for **reinstatement** YOU are covered for the cost of partial or total demolition and subsequent replacement of undamaged property or undamaged portions of property (whether or not the undamaged property or portions of property comprises a separate BUILDING or item of plant) where such partial or total demolition and subsequent replacement is solely necessary in order to carry out repairs or **reinstatement** of INSURED PROPERTY following LOSS OR DAMAGE by an EVENT.

OUR total liability shall not increase beyond the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

YOU are not covered under this POLICY for any work required to undamaged property solely to comply with any Act, By-Law or requirement of any Local or Public Authority.

#### 6.10 FLOOR SPACE RATIO

Where INSURED PROPERTY is insured for **reinstatement** and is subject to payment of any fee, tax, or other cost then WE will pay the following:

- a. The difference between:
  - i. the cost of **reinstatement** actually incurred in accordance with the reduced floor space requirement, and;
  - ii. the cost that would have been incurred had **reinstatement** with the original floor area been permitted.
- b. Any additional demolition, dismantling and debris removal costs necessarily incurred to comply with REGULATIONS.
- c. The cost of any fee, tax, or other cost to which the permission to **reinstatement** is subject.

The amount payable under a) above is to be ascertained and certified by an Architect or other suitably qualified person acting on YOUR behalf in connection with the **reinstatement**.

#### 6.11 CONTRACTUAL VALUE

Where INSURED PROPERTY is the subject of a lease, rental, hire or similar agreement which requires YOU to insure and/or be responsible for the property at an agreed value then WE will pay YOU in accordance with the agreed value as stipulated in the lease, rental or hire agreement up to a SUB-LIMIT of \$100,000. Provided that OUR total liability is not increased beyond the SUM INSURED of the INSURED PROPERTY that has been LOST OR DAMAGED.

#### 6.12 PROGRESS PAYMENTS

Following OUR acceptance of a claim under this POLICY, WE will provide YOU with progress payments.

Where the INSURED PROPERTY is insured for **reinstatement** and YOU elect to replace, then YOU shall be entitled to receive the INDEMNITY VALUE as soon as such sum has been established. If the cost of reinstatement exceeds the INDEMNITY VALUE, then YOU shall be entitled to reimbursement of the additional costs of **reinstatement** as they are incurred, up to the SUM INSURED.



### 6.13 REPAIR OR REINSTATEMENT BY INSURED

YOU are covered for the reasonable cost of any reasonable repair or **reinstatement** work in relation to LOSS OR DAMAGE under this section of the Policy undertaken by YOU. Due allowances shall be made for a reasonable margin of profit in respect of such work, provided these costs are reasonable and competitive. YOU must obtain OUR permission prior to undertaking such work unless the work is urgent and necessary to prevent further LOSS OR DAMAGE.

### 6.14 REINSTATEMENT OF AMOUNT OF INSURANCE

In the event of LOSS OR DAMAGE under this POLICY the SUM INSURED shall automatically and immediately reduce by the amount WE have to pay for the LOSS OR DAMAGE. The reduced SUM INSURED as a result of the LOSS OR DAMAGE will be automatically reinstated from the date the INSURED PROPERTY has been fully repaired, replaced or reinstated.

You must pay US any further premium required by US for the reinstated cover.

However, if the LOSS OR DAMAGE is as a result of NATURAL DISASTER DAMAGE there will be no automatic reinstatement of the SUM INSURED unless specifically agreed in writing by US.

## 7.0 POLICY EXCLUSIONS APPLYING TO MATERIAL DAMAGE SECTION

In addition, to the General Policy Exclusions (Section 9) YOU are not covered for the following:

- 7.1 the applicable EXCESS stated in the SCHEDULE which shall be deducted from any payment made under the POLICY in respect of each claim or series of claims arising from any one EVENT.
- 7.2 fraudulent misappropriation of INSURED PROPERTY committed by any employee, partner or director of the INSURED.
- 7.3 YOU voluntarily parting with title or possession of any INSURED PROPERTY if induced to do so by any fraudulent scheme, trick or false pretence.
- 7.4 any consequential economic loss including penalties, loss of use of any property, delays or loss of market.
- 7.5 LOSS OR DAMAGE caused solely by exposure to weather conditions to INSURED PROPERTY not normally left in the open unless reasonable precautions have been taken to protect the INSURED PROPERTY from those conditions.
- 7.6 unexplained loss or inventory shortages revealed only at stocktaking or shortages due to accounting or clerical errors other than that covered by the additional cover for MONEY (Clause 3.15).
- 7.7 LOSS OR DAMAGE caused by or resulting from normal settling, shrinkage or expansion of BUILDINGS or foundations, but YOU are covered for resulting LOSS OR DAMAGE this causes to other INSURED PROPERTY.
- 7.8 LOSS OR DAMAGE caused by landslip, subsidence, erosion or expansion of the ground.
- 7.9 LOSS OR DAMAGE to INSURED PROPERTY deliberately caused by YOU.

- 7.10** LOSS OR DAMAGE indirectly or directly caused by:
- a. Design fault, error or omission in design, plan or specification;
  - b. Wear and tear, gradual deterioration, corrosion;
  - c. Vermin or insects;
  - d. Change in artificially controlled temperature or atmosphere;
  - e. Fumes, gas, dust, smoke or smuts, action of light, inherent nature of the property, shrinkage, evaporation, loss of weight, change of flavour, colour, texture or finish, pollution, contamination, and interruption of the supply of water, gas, electricity or fuel.
- 7.11** LOSS OR DAMAGE to any plant or equipment directly caused by its own electrical malfunction.
- 7.12** LOSS OR DAMAGE to STOCK undergoing any production process where the LOSS OR DAMAGE is directly caused by the normal operation of that process.
- 7.13** LOSS OR DAMAGE directly caused by explosion, rupture, bursting, cracking, leakage, collapse, of steam boilers due to fluid pressure within or without (other than pressure caused by chemical explosion).
- 7.14** LOSS OR DAMAGE directly caused by mechanical or electronic breakdown of machinery or electrical equipment ("breakdown" means a failure due solely to internal stress or fault, the failure not being caused by an EVENT external to the effected machine or equipment).
- 7.15** Any costs incurred for the purpose of seismically strengthening the INSURED PROPERTY to a performance level greater than its performance level before the LOSS OR DAMAGE.
- 7.16** LOSS of MONEY due to:
- a. Shortages caused by errors in receiving or paying out;
  - b. Fraud or dishonesty of any employee of the INSURED unless such loss is discovered within 72 hours (excluding Saturday, Sunday and/or Public Holiday) of its occurrence;
  - c. Payment of MONEY for or in consideration of a cheque which is subsequently dishonoured;
  - d. MONEY being entrusted to any person other than YOU, YOUR employees, YOUR authorised agents, or a professional MONEY carrier.

Exclusions 7.10 to 7.15 (inclusive) do not apply where the LOSS OR DAMAGE is caused by or arises out of or in connection with an EVENT not otherwise excluded.

Exclusions 7.10 to 7.15 (inclusive) shall be limited to the item immediately affected and shall not extend to subsequent LOSS OR DAMAGE to other INSURED PROPERTY.

## SECTION 2: BUSINESS INTERRUPTION

### 8.0 INSURING CLAUSE – WHAT YOU ARE COVERED FOR

YOU are covered for BUSINESS INTERRUPTION LOSS that occurs during the PERIOD OF INSURANCE as a result of LOSS OR DAMAGE up to the SUMS INSURED specified in the SCHEDULE for each item insured below.

#### 8.1 GROSS PROFIT

1. YOU are insured for loss of GROSS PROFIT due to:

REDUCTION IN TURNOVER.

The amount payable shall be the rate of GROSS PROFIT multiplied by the REDUCTION IN TURNOVER.

2. Increase in cost of working

The amount payable shall be the additional expenditure necessarily and reasonably incurred solely to avoid or diminish a REDUCTION IN TURNOVER during the INDEMNITY PERIOD, provided that this additional expenditure does not exceed the sum produced by applying the rate of GROSS PROFIT to the amount of the reduction thereby avoided.

WE will deduct from YOUR claim for loss of GROSS PROFIT any sum saved during the INDEMNITY PERIOD for costs and expenses of the BUSINESS payable out of GROSS PROFIT which cease or reduce because of the LOSS OR DAMAGE.

#### 8.2 GROSS REVENUE

YOU are covered for loss of GROSS REVENUE due to:

1. Loss of REVENUE

The amount payable shall be the amount by which the GROSS REVENUE during the INDEMNITY PERIOD falls short of the STANDARD REVENUE as a result of the LOSS OR DAMAGE.

2. Increase in cost of working

The amount payable shall be the additional expenditure necessarily and reasonably incurred solely to avoid or diminish a reduction in GROSS REVENUE during the INDEMNITY PERIOD, provided that this additional expenditure does not exceed the amount of the reduction in GROSS REVENUE thereby avoided.

WE will deduct from YOUR claim for loss of GROSS REVENUE any sum saved during the INDEMNITY PERIOD for costs and expenses of the BUSINESS payable out of GROSS REVENUE which cease or reduce because of the LOSS OR DAMAGE.

#### 8.3 GROSS RENTALS

YOU are covered for loss of GROSS RENTALS due to:

1. Loss of GROSS RENTALS

The amount payable shall be the amount by which the GROSS RENTALS during the INDEMNITY PERIOD falls short of the STANDARD GROSS RENTALS as a result of the LOSS OR DAMAGE.

2. Increase in cost of working;

The amount payable shall be the additional expenditure necessarily and reasonably incurred solely to avoid or diminish a reduction in GROSS RENTALS during the INDEMNITY PERIOD, provided that this additional expenditure does not exceed the amount of the reduction in GROSS RENTALS thereby avoided.

WE will deduct from YOUR claim for Loss of GROSS RENTALS any sum saved during the INDEMNITY PERIOD for costs and expenses of the BUSINESS payable out of GROSS RENTALS which cease or reduce because of the LOSS OR DAMAGE.

**8.4 REDUNDANCY PAYMENTS**

You are covered for all payments which YOU make to employees in accordance with their employment contracts whose services are terminated as a result of the LOSS OR DAMAGE.

**8.5 PAYROLL/WAGES - DUAL BASIS**

YOU are covered for loss in respect of PAYROLL/WAGES due to:

1. REDUCTION IN TURNOVER:

- a. The amount payable during the INITIAL PERIOD shall be the sum produced by applying the RATE OF PAYROLL/WAGES to the REDUCTION IN TURNOVER, less any savings in PAYROLL/WAGES;
- b. The amount payable during the remaining portion of the INDEMNITY PERIOD, shall be the sum produced by applying the RATE OF PAYROLL/WAGES to the REDUCTION IN TURNOVER, less any savings in PAYROLL/WAGES, but not exceeding the sum produced by applying the remainder percentage of the RATE OF PAYROLL/WAGES to the REDUCTION IN TURNOVER, plus savings in PAYROLL/WAGES deducted under clause 1(a);

**Note:** If an “Alternative Period” is shown in the SCHEDULE, this may be substituted for the INITIAL PERIOD at YOUR option, provided that the claim under clause (1)(b) shall not exceed savings in PAYROLL/WAGES deducted under clause (1)(a).

2. Increase in cost of working:

The amount payable shall be the additional expenditure necessarily and reasonably incurred solely to avoid or diminish a REDUCTION IN TURNOVER provided that this additional expenditure does not exceed the amount that would have been payable under the provisions of clause 1(a) and (b) of this Item had such expenditure not been incurred.

**8.6 PAYROLL/WAGES IN LIEU OF NOTICE**

YOU are covered for FINANCIAL LOSS YOU incur for the payment of PAYROLL/WAGES in lieu of notice for a period beginning with the commencement of the INDEMNITY PERIOD and ending not later than the number of weeks stated in the SCHEDULE.

### **8.7 ADDITIONAL COST OF WORKING**

YOU are covered for the additional expenditure YOU necessarily and reasonably incur during the INDEMNITY PERIOD as a result of LOSS OR DAMAGE in order to:

1. minimise any BUSINESS INTERRUPTION LOSS;
2. resume or maintain any normal operation or service of the BUSINESS. No

cover is provided for expenditure which is:

- a. covered under another insured item's "increase in cost of working", until the amount of cover under that insured item for those expenses is exhausted; or
- b. incurred for reinstating INSURED PROPERTY.

### **8.8 REDEPLOYMENT EXPENSES**

YOU are covered for expenditure YOU reasonably incur in the necessary relocation of employees where as a result of the LOSS OR DAMAGE, YOU elect to permanently redeploy employees at any alternative sites. YOUR expenses will include all such expenses as YOU would normally incur or reimburse to employees when transferring employees and their families to different places of permanent residence for the purpose of the BUSINESS.

### **8.9 DEBTORS BALANCES**

YOU are covered for FINANCIAL LOSS YOU sustain in respect of outstanding debtors balances directly due to the LOSS OR DAMAGE. The amount payable in respect of the FINANCIAL LOSS after due allowance for bad debts shall not exceed:

1. the difference between:
  - a. the outstanding debit balances; and
  - b. the total of the amount received or traced in respect of the outstanding debit balances with due allowance made for bad debts; plus
2. the additional expenditure incurred in tracing and establishing customers debit balances after the LOSS OR DAMAGE.

### **8.10 PREPARATION OF CLAIM COSTS**

YOU are covered for the additional expenditure YOU reasonably incur in preparing and presenting, any claim accepted as a result of LOSS OR DAMAGE under either this section of the POLICY, the Material Damage section of the POLICY or both.

Salaries, wages, overheads and other expenses relating to YOUR employees incurred in the preparation of claims shall be deemed to be part of these costs and expenses.

## **9.0 ADDITIONAL COVER TO SECTION 2**

Where the SCHEDULE contains a SUB-LIMIT in relation to any additional cover referred to below then OUR liability shall not exceed that SUB-LIMIT in respect of the additional cover. Where the SCHEDULE shows a deferment period, this period will be the applicable EXCESS for the Additional Cover.

### 9.1 ACTS OF CIVIL AUTHORITIES

YOU are covered for FINANCIAL LOSS resulting from any action of a lawfully constituted civil authority consequent upon:

- a. LOSS OR DAMAGE to any property;
- b. bodily injury to any person on or within 10 Kilometres of the SITUATION;
- c. fumes, escape of any hazardous material, defective sanitation or effluent system; or any threat or fear of any of them.

OUR liability is subject to a time excess of twenty four (24) hours from the beginning of the EVENT that caused the FINANCIAL LOSS.

### 9.2 CONTRACTUAL COMMITMENTS

YOU are covered in respect of contractual commitments as a result of the LOSS OR DAMAGE. The amount payable shall be the amount YOU are legally liable to pay under contracts for purchases not used during the INDEMNITY PERIOD.

Any sums YOU receive or are receivable in respect of such purchases through any salvage handling operations or resale shall be deducted from the amount payable.

Provided payment under this extension is not as a result of YOU electing to carry out replacement by changing the nature or use of the INSURED PROPERTY.

### 9.3 DETERIORATION OF UNDAMAGED PROPERTY

YOU are covered for FINANCIAL LOSS resulting from deterioration or loss of value of any raw material or partially processed product or commodity due to YOUR inability to process it in the normal way following LOSS OR DAMAGE to INSURED PROPERTY.

Provided payment under this extension is not as a result of YOU electing to carry out replacement by changing the nature or use of the INSURED PROPERTY.

### 9.4 PENALTY PAYMENTS

YOU are covered for any penalties, fines, damages or other amounts which YOU are legally liable to pay in accordance with the terms and conditions of any contract, due to any unavoidable breach of contract by YOU during the INDEMNITY PERIOD resulting from any interruption to or interference with YOUR BUSINESS solely as a result of LOSS OR DAMAGE.

Provided payment under this extension is not as a result of YOU electing to carry out replacement by changing the nature or use of the INSURED PROPERTY.

### 9.5 FUMES GASES AND TOXIC CHEMICALS

YOU are covered for BUSINESS INTERRUPTION LOSS as a result of:

- a. fumes or gases;
- b. toxic chemicals or hazardous substances;

OUR liability is subject to a time excess of twenty four (24) hours from the beginning of the EVENT that caused the LOSS OR DAMAGE.



## 9.6 PREVENTION OF ACCESS

YOU are covered for BUSINESS INTERRUPTION LOSS as the result of LOSS OR DAMAGE, or threat to property or persons within a 10km radius of the SITUATION that prevents or hinders the use of such premises or its access or egress irrespective of whether YOUR premises or property is damaged, up to the SUB-LIMIT shown in the SCHEDULE.

OUR liability is subject to a time excess of twenty four (24) hours from the beginning of the EVENT caused by the LOSS OR DAMAGE

## 9.7 SUPPLIERS AND CUSTOMERS

YOU are covered for BUSINESS INTERRUPTION LOSS, in consequence of LOSS OR DAMAGE to:

- a. property and/or premises in New Zealand of suppliers of goods and services to YOU;
- b. property and/or premises in New Zealand of YOUR customers;
- c. premises in New Zealand where YOU have property stored, processed, repaired or for outwork;
- d. transport routes, port or airport installations anywhere in New Zealand which shall have an effect upon YOUR BUSINESS including not only closure due to an EVENT, but also closure by order of any authority or other body as a result of or fear of any EVENT, subject to a time excess of seven (7) days from the happening of the EVENT giving rise to such closure or disruption;
- e. Property Insured in transit within New Zealand or whilst temporarily housed in the course of transit.
- f. OUR liability shall not exceed the SUB-LIMIT stated in the SCHEDULE or agreed for a named customer or supplier as stated in the SCHEDULE for a specified percentage.

## 9.8 SUPPLY OF BASIC SERVICES

YOU are covered for BUSINESS INTERRUPTION LOSS following LOSS OR DAMAGE to anything that affects the supply of electricity, tele-communications, gas or water to YOUR BUSINESS, or the disposal of waste by YOUR BUSINESS.

This section excludes off-shore gas facilities and pipelines including pipelines to shore.

OUR liability is subject to a time excess of twenty four (24) hours from the beginning of the EVENT which caused the LOSS OR DAMAGE.

## 9.9 KEYMONEY OR GOODWILL

YOU are covered for the additional expenditure YOU reasonably and necessarily incur during the INDEMNITY PERIOD for the purpose of purchasing, leasing premises or business goodwill and/or key monies in order to establish the BUSINESS at alternative premises as a result of LOSS OR DAMAGE. If the goodwill and/or key monies of the new premises exceeds the amount that applied to the SITUATION, then the difference is to be borne by YOU.

## 9.10 CLOSURE DUE TO INJURY

If there is, within a 10km radius of the SITUATION, during the PERIOD OF INSURANCE:

- a. danger to human life; or
- b. injury to, murder or suicide of, any person; or

- c. the SITUATION or part thereof are closed by any authority due to defects in the drains and other sanitary arrangements or the escape of fumes or any hazardous material; or
- d. the threat or fear of any of them,

and this prevents or hinders access or egress or the use of the SITUATION there is deemed to be LOSS OR DAMAGE. If this LOSS OR DAMAGE results in BUSINESS INTERRUPTION LOSS, YOU are covered as set out in each item stated in the SCHEDULE.

**9.11 RAW MATERIALS CONTINGENCY**

WE will reimburse YOU for the value of YOUR STOCKS of raw materials which, in the event of BUSINESS INTERRUPTION LOSS due to LOSS OR DAMAGE, YOU are unable to utilise in the production and/or manufacture of finished products. Provided that WE have accepted a claim by YOU under this POLICY and the loss is not as a result of YOU electing replacement.

In the event of a claim under this item, the STOCKS of raw materials not utilised or intended to be utilised by YOU shall be OUR property to sell or dispose of as WE see fit.

The value of STOCKS of raw materials shall be the landed cost of goods.

The cover provided shall only apply to STOCK which at the time of the interruption of the BUSINESS, shall have been owned by YOU for not longer than twelve (12) months.

**10.0 BASIS OF SETTLEMENT – HOW WE WILL PAY YOU**

**101 ACCUMULATED STOCKS**

In adjusting any claim under this section of the POLICY, WE shall take account of and an equitable allowance shall be made if during the INDEMNITY PERIOD TURNOVER is temporarily maintained from accumulated stocks of finished goods held by YOU, thus causing a shortage of finished goods and/or reduced TURNOVER after the INDEMNITY PERIOD has expired.

**102 DEPARTMENTS**

If the BUSINESS is conducted in branches, departments, subsidiaries or other units and the independent trading results are ascertainable, this POLICY shall apply separately to each branch, department, subsidiary or other unit affected by the LOSS OR DAMAGE. However OUR total liability remains unchanged.

**103 NEW BUSINESS**

For the purpose of any claim arising from LOSS OR DAMAGE occurring before the completion of the first year's trading of the BUSINESS at the SITUATION the terms RATE OF GROSS PROFIT, ANNUAL TURNOVER, STANDARD TURNOVER and STANDARD GROSS RENTALS shall bear the meanings as defined in the "Definitions to be Adjusted".

**104 OUTPUT TURNOVER OPTION**

At YOUR option, the term output may be substituted for the term TURNOVER or other index of business activity and for the purpose of this section of the POLICY "output" shall mean sale value of goods manufactured by YOU or such other definition of index normal to that business activity in the course of such Business.

#### **105 PROGRESS PAYMENTS**

In the event of a valid claim under this POLICY, WE will provide you with progress payments.

#### **106 PREMIUM ADJUSTMENT**

The premium charged under this section of the POLICY for any GROSS PROFIT or WAGES item is provisional only. The premium is adjustable at the end of the current PERIOD OF INSURANCE in accordance with the following conditions:

- a. YOU shall furnish a return of the annual GROSS PROFIT earned in the financial year most nearly concurrent with the PERIOD OF INSURANCE on which the premium shall be adjusted.
- b. WE will refund YOU the amount by which the provisional premium paid shall exceed the actual premium payable or alternatively, YOU shall pay US the amount by which the provisional premium paid shall fall short of the actual premium due to US.
- c. The minimum premium for any one annual PERIOD OF INSURANCE shall not be less than 50% of the deposit premium charged.
- d. Where the INDEMNITY PERIOD is in excess of twelve (12) months the adjustment shall be calculated on a proportionate increase on GROSS PROFIT and/or WAGES earned in direct proportion to which the INDEMNITY PERIOD bears to the annual figures stated under a) above.

#### **107 REINSTATEMENT OF AMOUNT OF INSURANCE**

In the event of LOSS OR DAMAGE for which a claim for BUSINESS INTERRUPTION LOSS is payable under this POLICY, and in the absence of written notice by US to the contrary, the amount payable under the POLICY for that BUSINESS INTERRUPTION LOSS will be automatically reinstated from the date the INSURED PROPERTY which was LOST OR DAMAGED was repaired or replaced. YOU undertake to pay such pro-rata premium as may be required for the reinstatement.

However, if the LOSS OR DAMAGE is as a result of NATURAL DISASTER DAMAGE, the amount payable will not be reinstated unless WE agree to this.

## 11.0 GENERAL DEFINITIONS

### THE FOLLOWING DEFINITIONS APPLY TO ALL SECTIONS OF THIS POLICY

**ARTEFACT** means an object of cultural or historical interest and includes sporting memorabilia.

**ASSESSOR** means a loss adjuster or assessor appointed by US and that is acceptable to YOU.

**BURGLARY** means LOSS OR DAMAGE resulting from THEFT or any attempt at THEFT accompanied by:

- a. violent and forcible entry to or exit from any enclosed BUILDING; or
- b. violence or threat of violence to a person.

**BUSINESS** means YOUR business as specified in the SCHEDULE.

**BUILDING** means any BUILDING or structure together with underground and above ground services directly associated with the BUILDING, permanently attached fixtures and fittings, including but not limited to signs, fire protection systems, wired security systems, site improvements and landscaping.

**DESTROYED** means so damaged by an EVENT that the INSURED PROPERTY, by reason only of that damage, cannot be economically repaired. A BUILDING shall be deemed uneconomic to repair where the estimated costs of reinstatement exceed 85% of that BUILDING'S SUM INSURED. However the cost of seismically strengthening INSURED PROPERTY to a level greater than its level before the LOSS OR DAMAGE will not be taken into account in determining whether any INSURED PROPERTY is DESTROYED a can be economically repaired.

**EVENT** means any happening or series of happenings arising from one source or original cause .

**ELECTRONIC DATA** means facts, concepts and information converted to a form useable for communications, display, distribution, interpretation or proceeding by electronic and electromechanical data proceeding or electronically controlled equipment and includes programmes, software and other coded instructions for such equipment.

**EXCESS** means the applicable excess shown in the SCHEDULE that will be deducted from the amount payable in respect of LOSS OR DAMAGE to INSURED PROPERTY caused by an EVENT. Where an EVENT occurs over a period of more than 72 consecutive hours, one excess will be deducted for every 72 consecutive hour period.

**INSURED** means the person(s) or entity/entities named in the SCHEDULE and any subsidiary company (of which more than half the nominal value of whose equity share capital is owned by the named INSURED either directly or through other subsidiaries) and any entity over which an INSURED exercises management control.

**INSURED PROPERTY** means all real and personal property of every kind at the SITUATION including:

- a. Property which YOU own or which is in YOUR care, custody and control; and
- b. The personal effects and tools of YOUR employees, directors, consultants and visitors which are in YOUR care, custody or control or for which YOU are responsible;

But excluding the following property (unless stated in the SCHEDULE).

- a. Waterborne craft or vessels, aircraft, railway locomotives and railway rolling stock including their accessories unless held as STOCK for the BUSINESS or auction;
- b. Livestock, animals, standing timber and growing crops;
- c. Bullion, precious stones, jewellery, furs and precious metals unless held as STOCK or forming part of plant and tools of the BUSINESS;

- d. Motor vehicles and other mechanically or electrically propelled vehicles including their accessories, unless held as STOCK for the BUSINESS or as stated in the SCHEDULE; (but this exclusion does not apply to mobile plant used in or around the SITUATION);
- e. Dams, canals, reservoirs and rail or road bridges, road or rail tunnels, docks, piers, wharves, mining property located beneath the surface of the ground and land (other than landscaping and planting costs). This shall not apply to any reservoirs, tunnels and bridges located at any SITUATION owned or occupied by YOU which do not individually exceed \$100,000 in value; or
- f. Property in the course of construction and/or building alterations and/or installation of additional machinery/plant where the total value of the contract work exceeds \$100,000 or a higher amount as may be stated in the SCHEDULE.

**INDEMNITY VALUE** means whichever of the following options WE choose:

- a. the cost of repairs to restore the INSURED PROPERTY to a condition that is as near as possible to its condition immediately prior to the LOSS OR DAMAGE, or
- b. the replacement of the INSURED PROPERTY with property of a similar condition, age and specification, as it was in, immediately prior to the LOSS OR DAMAGE, or
- c. the payment of an amount equal to either (a) or (b) above based on a market value of the INSURED PROPERTY immediately prior to the LOSS OR DAMAGE.

**LOSS OR DAMAGE** means sudden physical loss of or physical damage to INSURED PROPERTY that was unintended or unforeseen by YOU.

**MONEY** means current coin, bank notes, currency notes, cheques including non-negotiable cheques, postal orders, travellers cheques, Money orders, credit card vouchers, petrol vouchers, tickets, other negotiable instruments, unused postage, unused franking machine credits and revenue stamps belonging to the Insured or for which the Insured is responsible.

**NATURAL DISASTER DAMAGE** means any of the following: earthquake, subterranean fire, volcanic eruption, tsunami, geothermal activity, hydrothermal activity or fire occasioned by or through or in consequence of any of these.

**PERIOD OF INSURANCE** means the period that commences and ends at the times and dates as stated in the SCHEDULE and including any extension of this period as agreed to in writing by US.

**POLICY** means this policy wording, the SCHEDULE, and any endorsement attaching to and forming part of the POLICY either at commencement or during the PERIOD OF INSURANCE.

**REGULATION** means regulation made under or framed in pursuance of any Act of Parliament or regulation or by-law of any Local Authority.

**SITUATION** means the situation stated in the SCHEDULE.

**SCHEDULE** means the most recent version of the SCHEDULE issued for the relevant section of the POLICY (namely the Material Damage SCHEDULE and the Business Interruption SCHEDULE).

**STOCK** means stock and materials in trade owned by YOU.

**SUB-LIMIT** means the SUM INSURED relating to specified additional cover as shown in the SCHEDULE. Any SUB-LIMIT indicated on the SCHEDULE is included within, and not in addition to, the SUM INSURED for that item of INSURED PROPERTY shown on the SCHEDULE.

**SUM INSURED** means the limit of OUR liability in relation to specified items of INSURED PROPERTY as stated in the SCHEDULE.

**THEFT** means the taking of any property with the intent to permanently deprive the owner of that property.

**TOTAL SUM INSURED** means the maximum amount payable by US under this POLICY.

**WE/US/OUR** means Delta Property Insurance Limited for and on behalf of Certain Underwriters at Lloyd's as noted in the SCHEDULE.

**WORK OF ART** means an object of artistic or cultural value including but not limited to pictures, paintings, prints, sculptures or ornaments, hand woven carpets, rugs or mats.

**YOU/YOUR** means the INSURED.

## 12.0 DEFINITIONS APPLYING ONLY TO BUSINESS INTERRUPTION SECTION

**BUSINESS INTERRUPTION LOSS** means FINANCIAL LOSS caused by interruption to or interference with YOUR BUSINESS operations.

**FINANCIAL LOSS** means the reduction in the financial value of YOUR BUSINESS in respect of those items shown in the SCHEDULE but excluding consequential financial losses such as losses arising out of the following:

- a. delays
- b. loss of market;
- c. penalties;
- d. rate, taxes, duties, development charges;
- e. other charges or assessments arising out of capital appreciation, that are payable to comply with any regulations.

**GROSS PROFIT** means the amount by which YOUR TURNOVER plus YOUR CLOSING STOCK exceeds YOUR OPENING STOCK plus YOUR UNINSURED WORKING EXPENSES.

**Note:** The amount of the OPENING STOCK and CLOSING STOCK shall be arrived at in accordance with YOUR normal accountancy methods allowing for depreciation.

**GROSS RENTALS** means the MONEY paid to YOU or MONIES billed by YOU in respect of rent or management fees for the SITUATION including rates, insurance premiums on the building tenanted, car parking rentals and other services rendered.

**GROSS REVENUE** means the MONEY paid to YOU or MONIES billed by YOU for goods sold, work done or services provided as part of YOUR BUSINESS.

**INDEMNITY PERIOD** means the period beginning when the BUSINESS is first interrupted or interfered with in consequence of LOSS OR DAMAGE and ending no later than the number of months specified in the SCHEDULE

YOU have the option to defer the commencement of the INDEMNITY PERIOD by up to 12 months from the date of the EVENT which causes LOSS OR DAMAGE, provided WE have not already paid or agreed to pay a claim under this section of the POLICY.



**INITIAL PERIOD** is the period beginning with the Event and ending upon completion of the number of weeks shown in the SCHEDULE.

**PAYROLL** means the gross remuneration (including but not limited to wages, salaries, accident compensation, redundancy payments, levies, bonuses, sick pay, holiday pay, superannuation contributions and other payments pertaining to payroll calculated on "per capita" or percentage of PAYROLL basis), for all employees of the BUSINESS.

**REDUCTION IN TURNOVER** means the amount that the TURNOVER, during any part of the INDEMNITY PERIOD, falls short of the STANDARD TURNOVER as a result of LOSS OR DAMAGE.

**TURNOVER** means the MONEY paid or payable to YOU for goods sold and delivered and for services rendered in the course of the BUSINESS at the SITUATION. If during the INDEMNITY PERIOD goods are sold or services rendered elsewhere than at the SITUATION for the benefit of the BUSINESS either by YOU or by others on YOUR behalf, the MONEY paid or payable in respect of such sales or services shall be brought into account in arriving at the TURNOVER during the INDEMNITY PERIOD.

**UNINSURED WORKING EXPENSES** means purchases less discounts received, bad debts, or other expenses as may be stated in the SCHEDULE.

**WAGES** means all remunerations (including a pro-rata proportion of bonuses, holiday pay, accident compensation levies and any other charges relating to wages) of all employees other than those whose remunerations are treated as salaries in YOUR accounts.

#### **DEFINITIONS TO BE ADJUSTED**

The following are to be adjusted so that they represent as closely as possible what the figures would have been during the INDEMNITY PERIOD if the LOSS OR DAMAGE had not happened.

In calculating the RATE OF GROSS PROFIT, STANDARD TURNOVER, STANDARD REVENUE and STANDARD GROSS RENTALS (as defined below) the financial year/twelve month period prior to the damage shall be read as the period between the date of the commencement of BUSINESS and the date of damage.

#### **RATE OF GROSS PROFIT**

The rate of GROSS PROFIT earned on the TURNOVER during the financial year immediately before the date of LOSS OR DAMAGE.

#### **RATE OF PAYROLL/WAGES**

The rate of PAYROLL/WAGES to TURNOVER during the financial year immediately before the date of LOSS OR DAMAGE.

#### **STANDARD TURNOVER**

The TURNOVER during the period in the 12 months immediately before the date of LOSS OR DAMAGE.

#### **STANDARD REVENUE**

The GROSS REVENUE earned during the period in the 12 months immediately before the date of LOSS OR DAMAGE.

#### **STANDARD GROSS RENTALS**

The GROSS RENTALS during the period in the 12 months immediately before the date of LOSS OR DAMAGE.

## 13.0 GENERAL POLICY EXCLUSIONS

### 13.1 STRUCTURAL DEFECTS EXCLUSION

YOU are not covered for any LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS of any type connected in any way with a BUILDING being affected by:

- a. Moisture or water build-up or the penetration of external moisture or water, or
- b. the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa, or any similar or like forms, that is caused directly or indirectly by:
  - i. faulty design or faulty specification, including but not limited to faulty sequence, procedure or program, or
  - ii. faulty materials, or
  - iii. faulty workmanship, when the building or structure was constructed, manufactured, altered, repaired, renovated or maintained.

This exclusion does not apply, however:

- a. to LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS that is caused by or directly arises from the leakage of internal pipes, internal water systems or internal cisterns.
- b. Where fire or explosion is the result of (b)(i), (ii) and (iii) above, then the POLICY will insure against any LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS directly caused by the fire or explosion, subject to all the terms of this POLICY in so far as they can apply.

### 13.2 INFECTIOUS DISEASES EXCLUSION

YOU are not covered for LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS in connection with a Notifiable Infectious Disease under the Health Act 1956.

### 13.3 WAR AND TERRORISM EXCLUSION

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war bedecared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

#### **134 ELECTRONIC DATA EXCLUSION**

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- a. This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- b. ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.
- c. COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

**Computer** includes computer hardware computer software microchip microprocessor any electronic equipment and any device which gives or processes or receives or stores electronic instructions or information.

#### **135 RADIOACTIVE CONTAMINATION AND EXPLOSIVE NUCLEAR ASSEMBLIES**

This POLICY does not cover LOSS OR DAMAGE to any property whatsoever or any BUSINESS INTERRUPTION LOSS, expense, consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to, by, or arising from:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### **136 INDUSTRIES, SEEPAGE, POLLUTION AND CONTAMINATION**

This POLICY does not cover any liability for:

- a. personal injury or bodily injury or LOSS OR DAMAGE to or loss of use of INSURED PROPERTY or BUSINESS INTERRUPTION LOSS directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph 1 shall not apply to liability for personal injury or bodily injury or LOSS OR DAMAGE to or destruction of INSURED PROPERTY, or loss of use of such INSURED PROPERTY damaged or destroyed, or BUSINESS INTERRUPTION LOSS where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the PERIOD OF INSURANCE.

- b. The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected EVENT during the PERIOD OF INSURANCE.
- c. Fines, penalties, punitive or exemplary damages.

**137 BIOLOGICAL OR CHEMICAL MATERIALS**

This POLICY does not cover LOSS OR DAMAGE costs or expenses of whatsoever nature directly or indirectly caused by resulting from or in connection with the actual threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contribution concurrently or in any other sequence hereto.

**138 ASBESTOS AND HAZARDOUS SUBSTANCES**

This POLICY does not cover LOSS OR DAMAGE, costs or expense directly or indirectly arising out of or resulting as a consequence of the manufacture, mining, processing, ownership. Distribution, testing, remediation, removal, storage, disposal, sale, transportation, use of or exposure to asbestos or silica or polychlorinated biphenyl or materials or products containing such substances (or any other component building material hazardous to health) whether or not there is another cause of LOSS OR DAMAGE which may have contributed concurrently or in any sequence to the LOSS OR DAMAGE.

**139 SANCTIONS**

This POLICY does not cover and WE will not be liable to pay any claim or provide any benefit under this POLICY to the extent that the provision of such cover, payment of such claim or provision of such benefit would be in violation of any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or New Zealand.

**1310 SEISMIC STRENGTHENING**

Notwithstanding any provision to the contrary within this POLICY or any endorsement thereto, this POLICY does not cover LOSS OR DAMAGE costs or expenses of whatsoever nature in connection with seismically strengthening INSURED PROPERTY to a level greater than its level before the LOSS OR DAMAGE. The cost of seismically strengthening INSURED PROPERTY to a level greater than its level before the LOSS OR DAMAGE will not be taken into account in determining whether any INSURED PROPERTY is DESTROYED.

**140 GENERAL POLICY CONDITIONS**

**141 CANCELLATION**

YOU may cancel this POLICY at any time with immediate effect by notifying US in writing. If YOU do, WE will refund any premium that is due to YOU based on the unused portion of the PERIOD OF INSURANCE. YOU must pay any outstanding premium due for the used portion of the PERIOD OF INSURANCE.

WE may cancel or modify the POLICY at any time by advising YOU (or YOUR broker or agent) by letter or email. Cancellation will take effect at 4pm on the 30<sup>th</sup> day after the date of OUR letter or email. WE will refund any premium that is due to YOU based on the unused portion of the PERIOD OF INSURANCE.

**142 GOODS AND SERVICES TAX (GST)**

Provided GST is recoverable by US under the Goods and Services Tax Act 1985 (or any statutory amendment or re-enactment of the Act) then:

- a. All SUMS INSURED stated in the POLICY exclude GST and;
- b. GST will be added, where applicable, to claim payments.

### 143 INSPECTION

WE may inspect YOUR property and operations at any time provided WE give YOU prior notice and YOU shall provide all details and information WE may reasonably require that relates to the subject of the insurance. Neither OUR right to make inspections nor the making thereof nor any report in relation to such inspections may be used by YOU or any other party to determine or warrant that such operations are safe.

### 144 MISDESCRIPTION

This POLICY will not be invalidated or prejudiced by:

- a. Any innocent or inadvertent alteration or mis-description of property or occupancy or any other innocent inaccuracy which does not affect the SUM INSURED;
- b. Any innocent or inadvertent misrepresentation or non-disclosure of any material fact;
- c. The breach of any condition or warranty without YOUR knowledge and consent;
- d. Any act of an occupier whereby the risk of LOSS OR DAMAGE to INSURED PROPERTY not occupied by YOU is increased without YOUR authority or knowledge or the authority or knowledge of YOUR representative;

provided that:

- i. YOU complied with the landlord obligations set out at 3.26; and
- ii. written notice is given to US as soon as practicable once YOU become aware of the above and YOU agree to pay an appropriate additional premium and/or agree to a change in terms and conditions if required by US.

For the purposes of this clause, each INSURED (if more than one) will be treated as having been insured with a separate POLICY.

### 145 OBSERVANCE OF TERMS AND CONDITIONS

YOU must comply with all of the terms and conditions of this Policy insofar as they are relevant to YOU. The truth of any statements made by YOU shall be conditions precedent to any liability to US to provide cover under this POLICY. Nothing in this POLICY affects OUR common law rights, including the right to avoid the POLICY for non-disclosure.

### 146 OTHER INSURANCE

This POLICY does not cover you for LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS if it is insured to any extent under any other insurance policy. WE will only pay the amount of any LOSS OR DAMAGE or BUSINESS INTERRUPTION LOSS that is in excess of that recoverable under the other insurance policy.

### 147 OTHER INTERESTS

WE will cover any person or entity having an insurable interest in the INSURED PROPERTY. This includes contractors and subcontractors as co-insureds to the extent required by any contract. Subrogation is waived against such interested parties to the extent required by the contract.

The words "unintended or unforeseen" in this section of the Policy are to be interpreted from the standpoint of the Insured person seeking cover in respect of such loss.

OUR liability to any other person or entity having an insurable interest in the INSURED PROPERTY will be no greater than any liability WE have to YOU.

Any amount WE pay to an interested party or parties will meet OUR obligations to YOU under this POLICY

## 148 SUBROGATION

Once WE have accepted any part of YOUR claim under this POLICY, we may assume YOUR legal right of recovery at OUR cost. YOU shall provide all reasonable assistance to US and our legal advisors in relation to any recovery action.

If WE initiate a recovery, WE will include YOUR EXCESS and, at YOUR option, any other uninsured losses suffered by YOU. Where WE do this, YOU must pay YOUR proportional share of the recovery costs, and subsequently the proceeds of the recovery will be shared on the same proportional basis, except that we will reimburse YOUR EXCESS first.

## 149 COMMERCIAL COOKING WARRANTY

It is a condition of this POLICY that YOU and anyone using cooking equipment for commercial gain at the SITUATION must take all of the following precautions:

- a. All deep fryers and other cooking equipment in which frying is carried out at the SITUATION must have close-fitting metal lids. The metal lid must be fitted and in the closed position outside normal working hours and when the fryer is not in operation. During working hours the metal lid must be readily available for immediate use at all times if required.
- b. A fire blanket, not less than 1.2 metres x 1.8 metres in size, must be installed in a conspicuous place in the vicinity of, but at a safe distance away from, the commercial cooking operation. The fire blanket must be readily accessible for immediate use at all times if required.
- c. At least one correctly labelled fire extinguisher, suitably rated "F" in accordance with AS/NZS1850:2009, must be mounted in a conspicuous place in the vicinity of, but at a safe distance away from, the commercial cooking operation. The fire extinguisher must be readily accessible for immediate use at all times if required. All fire extinguishers at the SITUATION must be serviced at least once a year and maintained in efficient working order at all times.
- d. A separate external non-adjustable and manually operated cut-out mechanism must be fitted to all deep fryers at the SITUATION. All cut-out mechanisms must automatically disconnect each heat source from the energy supply when the temperature of the cooking liquid reaches a maximum of 220 Centigrade.
- e. All cut-outs, thermostats, heating elements and associated controls must comply with all relevant New Zealand Standards/Codes of Practice and must be maintained in safe efficient working condition at all times and checked by a registered electrician at least once a year.
- f. All cooking equipment must comply with all applicable electrical/gas regulations at all times and must be maintained in good working order in accordance with the manufacturer's recommendations.
- g. Each deep fryer at the SITUATION must have an on/off switch to the energy supply which is remote from the deep fryer. The switch must be in the 'off' position outside YOUR normal operating hours and when the premises are unattended. The switch must be readily accessible for immediate use at all times if required.
- h. A metal extraction hood must be installed above all deep fryers with a metal flue venting externally. Grease filters must be fitted in the flue and must be readily accessible for cleaning. Grease filters must be cleaned at frequent and regular intervals, but at least weekly. Extraction flues and ducting must be inspected monthly. Extraction flues and ducting must be cleaned frequently and at regular intervals, but at least every 6 months. All associated fans and blades must be inspected at least annually, and cleaned as necessary but at least once a year.
- i. All cooking liquids, food, fat and food scraps must be removed from each deep fryer at the SITUATION at the end of each day's operations. All cooking liquids to be disposed of must be stored in a closed metal container at all times until removal from the SITUATION.

If YOU are not the occupier of the SITUATION or the operator of the cooking equipment, YOU must instruct the occupier or operator in writing that the above requirements are a condition of insurance and must be complied with at all times.

If YOU or the occupier of the SITUATION or the operator of the cooking equipment fails to comply with any of the above and that failure causes and/or contributes in any way to LOSS OR DAMAGE to INSURED PROPERTY, WE may refuse to pay all or part of YOUR claim.

For the purposes of this Warranty “cooking equipment” means deep fryers, frying pans, bench top or miniature deep fryers, woks and other similar equipment and appliances.

## Lloyd's Specific Clauses Applicable to this Insurance Policy

### MICROORGANISM EXCLUSION (ABSOLUTE)

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

14/09/2005    LMA5018    Form approved by Lloyd's Market Association

### COMMUNICABLE DISEASE ENDORSEMENT

1. This policy, subject to all applicable terms, conditions and exclusions, covers losses attributable to direct physical loss or physical damage occurring during the period of insurance. Consequently and notwithstanding any other provision of this policy to the contrary, this policy does not insure any loss, damage, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, damage, claim, cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:
  - 2.1. for a Communicable Disease, or
  - 2.2. any property insured hereunder that is affected by such Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.3. the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder.
4. This endorsement applies to all coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).

All other terms, conditions and exclusions of the policy remain the same.

25/03/2020    LMA5393



## PROPERTY CYBER AND DATA EXCLUSION

1. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto this Policy excludes any:
  - 1.1 Cyber Loss;
  - 1.2 loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Data, including any amount pertaining to the value of such Data;regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- 2 In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
- 3 This endorsement supersedes and, if in conflict with any other wording in the Policy or any endorsement thereto having a bearing on Cyber Loss or Data, replaces that wording.

### Definitions

- 4 Cyber Loss means any loss, damage, liability, claim, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident.
- 5 Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
- 6 Cyber Incident means:
  - 6.1 any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
  - 6.2 any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
- 7 System means:
  - 7.1 any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.
- 8 Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.

11/11/2019 LMA5401

## INDUSTRIES, SEEPAGE, POLLUTION AND CONTAMINATION CLAUSE NO. 3

This Insurance does not cover any liability for:

1. Personal Injury or Bodily Injury or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph 1. shall not apply to liability for Personal Injury or Bodily Injury or loss of or physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this Insurance.
2. The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the period of this Insurance.
3. Fines, penalties, punitive or exemplary damages.

This Clause shall not extend this Insurance to cover any liability which would not have been covered under this Insurance had this Clause not been attached.

22/1/70      NMA1685

## CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrendering of this Contract of Insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than 10 days thereafter, the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the customary short rate proportion of any Minimum Premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the Earned Premium hereon or the pro rata proportion of any Minimum Premium stipulated herein whichever is the greater.

Payment or tender of any Unearned Premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

20/4/61      NMA1331

## **BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION**

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

06/02/03      NMA2962