

This Endorsement Changes the Policy. Please Read It Carefully.

Attached to and forming part of the Commercial General Liability Max form shown on the Declaration Page(s).

Except as otherwise provided in this Form, the following Extensions of Coverage are subject to all terms, conditions, exclusions, stipulations and provisions applicable to the Commercial General Liability Max form, including the right and duty to defend and the provisions of the SUPPLEMENTARY PAYMENTS – COVERAGES A, B and D contained in SECTION I – COVERAGES.

Other words and phrases that appear in bold have special meaning. Refer to SECTION IV – DEFINITIONS of the Commercial General Liability Max form or in this Form. The definitions contained under this Form prevail over the definitions contained under the Commercial General Liability Max Form.

The titles of sections or paragraphs listed below should not be considered for purposes of interpreting the intent of this Form; these titles have only been inserted for ease of reading.

SUMMARY OF COVERAGES

Items	Extensions of Coverage	Limits of Insurance
1.	Building Materials Replacement Cost	\$50,000
2.	Crane and Hoist Operators' Liability	\$100,000
3.	Difference in Deductibles	\$50,000
4.	Employee Benefit Liability	\$2,000,000
5.	Employers Liability– Voluntary Compensation	Subject to Schedule of Benefits described in Extension of Coverage
6.	Employment Practices Liability	\$25,000
7.	Financial Loss Coverage	\$25,000
8.	Hoist, Elevator, Escalator or Lift Collision	\$100,000 Per Occurrence
9.	Limited Coverage for Failure of Product or Work to Meet Written Specifications	\$100,000
10.	Limited Pollution Liability Coverage (120 Hours)	\$100,000 (including Clean-up costs)
11.	Penal Defence Costs Coverage	\$10,000 Per Offence \$25,000 Aggregate
12.	Product Recall Expenses	\$100,000
13.	Trademark Infringement	\$50,000

LIMITS OF INSURANCE

- The Limits of Insurance shown above in the Summary of Coverages or in the Declarations Page(s) are the most we will pay under the Extensions of Coverage described below, regardless of the number of Insureds, claims made or **actions** brought, or persons or organizations making claims or bringing **actions**. If a limit of insurance for an Extension of Coverage is shown on both the Summary of Coverages above and in the Declaration Page(s), the higher limit will apply.
- Unless otherwise stated, each Limit of Insurance stated above or in the Declaration Page(s) is:
 - An Aggregate Limit of insurance that is the most we will pay under the applicable Extension of Coverage during the **policy period** for the sum of all amounts payable under that Extension of Coverage; and
 - In addition to, and not part of, the Limit of Insurance - Each Occurrence Limit applicable to the Commercial General Liability Max Form.
- The Aggregate Limits of insurance applicable to the Extensions of Coverage described below apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the **policy period**, unless the **policy period** is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

EXTENSIONS OF COVERAGE

In the event that more than one Extension of Coverage applies to the risk insured, only the Extension of Coverage with the highest limit of insurance will apply. In the event a more specific coverage elsewhere in the Policy applies to the risk insured by one of these Extensions of Coverage, only that specific coverage, and not the Extension of Coverage contained in this Form, will apply.

1. BUILDING MATERIALS REPLACEMENT COST

1.1. INSURING AGREEMENT

1.1.1. We will pay the cost of labour to remove and/or replace building material products installed by or on behalf of the Insured which are in place and form part of any type of structure or other property constructed or being constructed by or on behalf of the Insured;

Provided that:

1.1.1.1. The removal and/or replacement is made necessary by the ascertainment that such products are defective to the extent they have been rejected by the owner of the structure or their accredited representative or by any municipal or other authority having jurisdiction of the structure; and

2.1.1.1.2. The defect arose out of the design, manufacture, blending, mixing or compounding of such products.

1.1.2. This insurance shall not apply to any products installed prior to the effective date of this Policy.

2. CRANE AND HOIST OPERATORS' LIABILITY

2.1. INSURING AGREEMENT

We will pay those sums that the Insured becomes legally obligated to pay as **compensatory damages**, including resultant loss of use, for direct physical loss or destruction of, or damage to, the property of others only while such property is being moved or lifted by any of the Insured's cranes or by any similar equipment owned or rented by the Insured from the commencement of hitching the property to the crane or other similar equipment, until the property is unhitched.

2.2. ADDITIONAL EXCLUSIONS

This insurance does not apply to loss of or damage to property directly or indirectly caused by or resulting from:

2.2.1. Criminal or willful acts or omissions of an Insured;

2.2.2. The weight of any load, including the load block and all rigging, exceeding any or all of:

2.2.2.1. The maximum allowable load;

2.2.2.2. The lifting capacity;

2.2.2.3. The rated load; or

2.2.2.4. Eighty-five percent (85%) of the minimum tipping load;

any or all of which may be set out in the manufacturer's specifications, capacity tables or rating sheets for the particular unit involved;

2.2.3. The neglect of an Insured to use all reasonable means to save and preserve the property at and after any loss;

2.2.4. Consequential loss however caused; or

2.2.5. Any insufficient, defective, or improper processing of or work done upon such property.

3. DIFFERENCE IN DEDUCTIBLES

3.1. INSURING AGREEMENT

If other insurance is provided under a **Wrap-Up Liability Insurance Policy**, we agree to indemnify you with respect to any loss arising from **your work**, for the difference in deductibles where the amount of any deductible applicable to this insurance is less than the amount of any deductible applicable to such **Wrap up Liability Insurance Policy**.

3.2. DEFINITION

For the purposes of this Extension of Coverage:

Wrap-Up Liability Insurance Policy means any specific liability insurance procured by any owner or anyone on the owner's behalf which insures the owner, you, majority of contractors, sub-contractors and others, engaged on a specific construction project.

4. EMPLOYEE BENEFIT LIABILITY

4.1. INSURING AGREEMENT

We will pay those sums that the **Insured** becomes legally obligated to pay as **compensatory damages** because of a **wrongful act** in the **administration** of your **employee benefit programs**, provided that the claim is first made during the **policy period** within Canada.

A claim by a person or organization seeking **compensatory damages** will be deemed to have been made when notice of such claim is received and recorded by any **Insured** or by us, whichever comes first.

4.2. EXCLUSIONS

This insurance does not apply to any claim based upon:

4.2.1. Failure of performance of contract by an insurer, or any other party, including the **Insured**, obligated to afford the benefits;

4.2.2. The **Insured's** failure to comply with any law concerning workers' compensation, employment insurance, social security, disability benefits or any similar law;

4.2.3. Any insufficiency of funds to meet any obligation under any plan included in the **employee benefits program**;

4.2.4. Failure of any investment plan to perform as represented by an **Insured**; or

4.2.5. Any advice given by an **Insured** to an **employee** to participate or not to participate in any investment plan.

4.3. EXTENDED REPORTING PERIOD

If this Policy is cancelled or not renewed for any reason except non-payment of the premium, we will provide an automatic extended reporting period of sixty (60) days for insurance provided under this Extension of Coverage.

A claim first made during the extended reporting period will be deemed to have been made on the last day of the **policy period** provided that the claim occurred before the end of the **policy period** and that we are notified not later than sixty (60) days after the end of the **policy period**.

4.4. DEFINITIONS

For the purposes of this Extension of Coverage:

4.4.1. **Administration** means:

- 4.4.1.1. Application of rules determining eligibility for participation to the **employee benefit programs**;
 - 4.4.1.2. Calculation of service and compensation credits for benefits;
 - 4.4.1.3. Preparation of **employee** communications material;
 - 4.4.1.4. Maintenance of participants' service and employment records;
 - 4.4.1.5. Preparation of reports required by government agencies;
 - 4.4.1.6. Calculation of benefits;
 - 4.4.1.7. Orientation of new participants and advising participants of their rights and options with respect to the **employee benefit programs**;
 - 4.4.1.8. Interpreting the **employee benefit programs**;
 - 4.4.1.9. Collection of contributions and application of contributions as provided in the **employee benefit programs** and book keeping;
 - 4.4.1.10. Preparation of reports concerning participants' benefits; and
 - 4.4.1.11. Processing of claims, effecting enrollment, termination or cancellation of **employees** under the **employee benefit programs**;
- provided all such acts are authorized by you.

4.4.2. **Employee** means your officer or your employee, whether actively employed, disabled or retired.

4.4.3. **Employee benefit programs** means one or more of the following types of insurance or plans maintained by you solely for the benefit of **employees**:

- 4.4.3.1. Group life insurance, group accident or health insurance, profit sharing plans, pension plans and stock subscription plans, investment plans, unemployment insurance, social security benefits, workers' compensation and disability benefits insurance; or
- 4.4.3.2. Any other similar **employee benefit programs** sponsored by you.

4.4.4. **Insured** means:

- 4.4.4.1. The Named Insured described in the Declaration Page(s); and
- 4.4.4.2. Each executive officer or any person employed by you and who is authorized to administer your **employee benefit programs**.

4.4.5. **Loss** means any event which gives rise to one or more claims.

4.4.6. **Wrongful act** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or other act done or wrongfully attempted by an **Insured** or any matter claimed, against an **Insured**, by reason of or in connection with the **administration** of the **employee benefit programs**.

5. EMPLOYERS LIABILITY – VOLUNTARY COMPENSATION

5.1. INSURING AGREEMENT

If Employers Liability Coverage is provided under the Commercial General Liability Max Form, we will pay, voluntarily, the benefits set out below either to or on behalf of an **employee** of the Insured on account of **bodily injury**, accidentally suffered by such **employee** and arising out of and in the course of his employment by the Insured, whether or not such **bodily injury** could give rise to liability imposed by law upon the Insured;

Provided that:

5.1.1. If the injured **employee** or any person acting on their behalf, refuses to accept the voluntary compensation benefits offered under the provisions of the preceding sub-paragraph, then we will be permitted, at any time in our discretion and without notice, to withdraw such offer to pay the said benefits, under which circumstances we will no longer be bound by the undertakings expressed in the preceding paragraph. If any claim or demand is made, or any **action** instituted against the Insured for damages for such injuries, such claim, demand or **action** will be considered a refusal to accept such voluntary compensation benefits and such refusal will abrogate in its entirety our agreement to pay such voluntary compensation benefits. In such event our obligation as expressed in other parts of the Policy having reference thereto will be available to the Insured and will be and remain our obligation as fully and completely as if this Extension of Coverage had not been written;

5.1.2. The benefits provided under this Extension of Coverage will not be payable unless at the time of the accident the **employee** was engaged in duties coming within the scope of the description of operations stated in the Declaration Page(s);

5.1.3. A full release of all claims of such **employee** or any person acting on their behalf, against the Insured is executed and delivered and that we will be subrogated in any rights of such **employee** or person (excluding all services available under any *Hospital Insurance Act* or any other similar law) against anyone other than the Insured and/or that such rights be transferred to us;

5.1.4. We shall in no event be liable under this Extension of Coverage for any claims arising from hernia, however caused.

5.2. SCHEDULE OF BENEFITS

5.2.1. Section I – Loss of Life

In the event of death resulting from **bodily injury** within a period of twenty-six (26) weeks after the date of the accident we will pay:

5.2.1.1. To dependants of the **employee** who were wholly dependent upon such **employee**, an amount equal to one hundred (100) times the **weekly indemnity** in addition to the benefits provided under Section II up to the date of death;

5.2.1.2. The actual funeral expenses not exceeding, however, the sum of \$500.

5.2.2. Section II – Temporary Total Disability

If such **bodily injury** shall within fourteen (14) days from the date of the accident totally and continuously disable the **employee** and prevent the **employee** from performing any and every duty pertaining to any occupation or employment, we will pay **weekly indemnity** for the period of such disability or for twenty-six (26) weeks whichever is the lesser period; provided however, that if the period of such disability is less than six (6) weeks, no benefit under this Section II shall be payable for the first seven (7) days of such disability.

5.2.3. Section III – Permanent Total Disability

If within twenty-six (26) weeks from the date of the accident and as a direct result of such **bodily injury**, the **employee** shall be deemed permanently and totally disabled, by medical evidence satisfactory to us, we will pay, in addition to the benefits provided under Section II, **weekly indemnity** for a further period of one hundred (100) weeks.

5.2.4. Section IV – Dismemberment Benefits

If such **bodily injury** shall within twenty-six (26) weeks from the date of the accident result in any one or more of the incapacities listed below in the SCHEDULE OF INCAPACITIES, we will pay **weekly indemnity** for the number of weeks shown opposite the incapacity in the said schedule in addition to the benefits payable under Section II, but in no event shall it be payable in addition to the benefits provided by Sections I and III.

The total amount payable under this Section IV for one or more incapacities shall not exceed one hundred (100) times the **weekly indemnity**. **SCHEDULE OF INCAPACITIES:**

Incapacity	No. of weeks	Incapacity	No. of weeks
<i>Loss or total irrecoverable loss of use of:</i>		<i>Loss or total irrecoverable loss of use of:</i>	
Arm: (a) at or above elbow; or (b) below elbow	100 80	Leg: (a) at or above knee; or (b) below knee	100 75
Hand at wrist	80	Foot at ankle	75
*Thumb: (a) at or above the second phalangeal joint; or (b) below the second phalangeal joint involving a portion of the second phalange	25 18	+ Great toe: (a) at or above the second phalangeal joint; or (b) below the second phalangeal joint involving a portion of the second phalange	15 8
* Index Finger: (a) at or above the second phalangeal joint; or (b) at or above the third phalangeal joint; or (c) below the third phalangeal joint, involving a portion of the third phalange	25 18 12	+ Any other toe: (a) at or above the second phalangeal joint; or (b) at or above the third phalangeal joint; or (c) below the third phalangeal joint, involving a portion of the third phalange	10 5 3
* Any other finger: (a) at or above the second phalangeal joint; or (b) at or above the third phalangeal joint; or (c) below the third phalangeal joint, involving a portion of the third Phalange	15 8 5	Sight of one eye Sight of two eyes Hearing of one ear Hearing of both ears	50 100 25 100

* For a combination of two or more of the incapacities marked with an *, the total amount payable shall not exceed eighty (80) times the **weekly indemnity**.

+ For a combination of two or more of the incapacities marked with a +, the total amount payable shall not exceed thirty-five (35) times the **weekly indemnity**.

5.2.5. Section V – Medical, Surgical, Dental, Pharmaceutical and Hospital Expenses

If such **bodily injury** necessitates medical or surgical treatment or confinement to hospital, we will pay in addition to all other benefits provided by this Form:

5.2.5.1. The cost of necessary medical, surgical, dental, pharmaceutical and hospital services (except those portions of such expenses payable or recoverable under any medical, surgical or hospitalization plan or law or under any other insurance policy or certificate issued to or for the benefit of any person for whom indemnity is provided), in accordance with the scale of charges provided by the *Workmen's Compensation Act* of the province in which the accident occurred during a period not exceeding twenty-six (26) weeks from the date of the accident; and

5.2.5.2. The cost of supplying or the reasonable renewing of prosthetic or orthopedic appliances as may be necessary for a period not exceeding fifty-two (52) weeks from the date of the accident.

5.3. SPECIAL CONDITION

We will have the right to examine the person of the injured **employee** when and as often as may be required while the claim is pending and also, in the case of death of the injured **employee**, to make an autopsy subject to any law of the province relating to autopsies. This Special Condition will not be held to vary, waive or extend any of the terms, conditions, exclusions, stipulations and provisions applicable to the Policy, other than as stated above.

5.4. DEFINITION

For the purposes of this Extension of Coverage:

Weekly indemnity means two-thirds of the **employee's** weekly wage at the date of the accident, but not exceeding in any event the sum of \$250 per week.

6. EMPLOYMENT PRACTICES LIABILITY

6.1. INSURING AGREEMENT

6.1.1. We will pay those sums that the Insured becomes legally obligated to pay as **compensatory damages** because of a **wrongful act** related to **employment practices** committed during the **policy period**.

6.1.2. For the purpose of determining the applicability of this insurance, all **wrongful acts** related to **employment practices** involving the same Insured, regardless of the number or type of **wrongful acts**, shall be deemed to have occurred on the date of the first **wrongful act**.

6.2. DEDUCTIBLE

Our obligation to pay **compensatory damages** on the Insured's behalf applies only to the amount of **compensatory damages** in excess of the \$1,000 deductible applicable to this Extension of Coverage.

6.3. EXCLUSIONS

This insurance does not apply to:

6.3.1. **Losses**, other than defence costs, which constitute:

6.3.1.1. **Benefits** due, or to become due, or the equivalent value of such **benefits** except where such **loss** is based upon a claim or **action** for actual or alleged wrongful dismissal, discharge or termination of employment;

6.3.1.2. Salary, wages, **benefits** or any other cost or expense you shall incur or be required to pay as economic relief if you are ordered, pursuant to a judgment or final adjudication, but fail to reinstate the claimant as an **employee**;

6.3.1.3. The costs of compliance with or the satisfaction or remedy of an undertaking, a direction, an order, a violation, a determination or a certificate negotiated, issued, made or committed under the *Employment Equity Act* of Canada, or any costs associated with any accommodation or affirmative action programme required by, pursuant to or ordered under the *Canadian Human Rights Act*; or

6.3.1.4. The costs of compliance with any order for or grant of or agreement to provide injunctive or non-pecuniary relief;

6.3.2. Claims or **actions** arising out of any violation of an obligation imposed by any act or regulation related to pay equity, workers' compensation, industrial accidents and occupational disease, occupational health and safety, employment insurance, welfare and social welfare, social security or old age security, retirement benefits or pension plan benefits, or disability benefits. However, this exclusion shall not apply to any claim or **action**:

6.3.2.1. For actual or alleged discrimination or employment-related; or

6.3.2.2. Arising out of any actual or alleged retaliatory treatment against the claimant by you on account of the claimant's exercise of rights pursuant to any such law;

6.3.3. Claims or **actions** arising out of any arrangement or plan related to the value of the stock, shares or security of the Insured including any stock purchase, stock-based awards, stock option plans, phantom stock, stock appreciation rights or any stock-based compensation plan;

6.3.4. Claims or **actions** arising out of any act committed by or at the direction of an Insured with the intent of contravening any law or any governmental or administrative rider or regulation;

6.3.5. Claims or **actions** arising out of the assumption of liability by you in an oral or written contract, but this exclusion does not apply to liability that you would have in the absence of the contract;

6.3.6. Claims or **actions** for bodily injury (except mental anguish and emotional distress) or damage to or destruction of any tangible property, including loss of use;

6.3.7. Claims or **actions** based upon, arising out of any lock-out, strike, picket line, replacement workers, actual or alleged unfair practices or other similar actions resulting from labour disputes or labour negotiations;

6.3.8. Claims or **actions** arising out of:

6.3.8.1. Your **insolvency**;

6.3.8.2. The closure of a business operation or location by you; or

6.3.8.3. Any re-organization of employees which results, within any sixty-day period, in the termination of the employment of twenty-five percent (25%) or more of your total workforce; or

6.3.9. Claims made or **actions** brought by relatives of an **employee** or by members of the household of an **employee**.

6.4. COVERAGE TERRITORY

This Extension of Coverage shall only cover claims made or **actions** brought in Canada in respect of **wrongful acts** committed in Canada and based on Canadian law.

6.5. OTHER INSURANCE

Notwithstanding what is provided for in any General Conditions form applicable to this Policy, if the Insured has other valid insurance against **compensatory damages** covered by this Extension of Coverage, the coverage that applies most specifically to the claim or the **action** shall be primary and the other coverage shall be excess.

6.6. DEFINITIONS

For the purposes of this Extension of Coverage:

6.6.1. **Action** means a civil proceeding in which damages because of **employment practices** to which this insurance applies are alleged. **Action** includes an arbitration proceeding to which you must submit or do submit with our consent.

6.6.2. **Benefits** means perquisites, fringe benefits, payments in connection with an **employee benefit plan** and any other payment, other than salary or wages, to or for the benefit of an **employee** arising out of the employment relationship.

6.6.3. **Employee** means an individual who was, now is, or shall be employed by you.

6.6.4. **Employee benefit plan** means any retirement, pension, supplemental pension, savings, retirement saving, profit sharing, deferred compensation, change of control, insurance, medical, hospital, dental, vision care, drug, sick leave, short term or long term disability, salary continuation, vacation pay or other employee benefit, plan, program, arrangement, policy or practice whether written or oral, formal or informal, funded or unfunded, registered or unregistered that is maintained or otherwise contributed to, or required to be contributed to for the benefit of an **employee**.

6.6.5. **Employment practices** means:

6.6.5.1. Wrongful dismissal, discharge or termination of employment;

6.6.5.2. Breach of any oral or written employment contract;

6.6.5.3. Violation of any law concerning discrimination in employment;

6.6.5.4. Employment-related harassment, including sexual harassment or other harassment in the workplace;

- 6.6.5.5. Wrongful deprivation of employment or promotion;
- 6.6.5.6. Wrongful discipline;
- 6.6.5.7. Employment-related invasion of privacy;
- 6.6.5.8. Employment-related defamation;
- 6.6.5.9. Employment-related wrongful infliction of emotional distress; and
- 6.6.5.10. Employment-related misrepresentation.

6.6.6. **Insolvency** means:

6.6.6.1. The financial position of the Insured as a debtor as that term is defined and used within the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. (1985), c. B-3 and, without limiting the generality of the foregoing, shall occur when any receiver, conservator, liquidator, trustee, sequestrator, court or similar provincial or federal official or a creditor takes control of, supervises, manages or liquidates the Insured; or

6.6.6.2. A reorganization proceeding of the Insured under the *Companies' Creditors Arrangement Act*, R.S.C. (1985), c. C-36.

6.6.7. **Loss** means **compensatory damages** which you become legally obligated to pay on account of any claims made or **actions** brought against you for a **wrongful act**.

6.6.8. **Wrongful act** means any negligent act, error, omission, negligence, breach of duty or misleading statement related to **employment practices** actually or allegedly committed or commenced by you.

7. FINANCIAL LOSS COVERAGE

7.1. INSURING AGREEMENT

We will pay the amount that the Insured becomes legally obligated to pay as **compensatory damages** for any financial loss arising from:

7.1.1. A latent defect in **your product** or **your work**; or

7.1.2. An error made in instructions for use of **your product** or **your work**.

7.2. EXCLUSIONS

This insurance does not apply to:

7.2.1. Loss or damage arising out of any **bodily injury** or **property damage**;

7.2.2. Loss or damage arising out of any action based on the performance of a contract made by the Insured; or

7.2.3. Loss or damage caused by a delay in delivery.

8. HOIST, ELEVATOR, ESCALATOR OR LIFT COLLISION COVERAGE

8.1. INSURING AGREEMENT

8.1.1. We will pay the Insured for damage caused to any **elevator** or to **property insured** carried on such **elevators** caused by an accidental collision of the **elevator** with another object.

8.1.2. Property covered under this Extension of Coverage will be valued on an actual cash value basis

at the time the damage occurs. 8.2. LIMIT OF INSURANCE

In addition to the provisions contained in Paragraph 1. of the Limits of Insurance section shown in this Form, the following provision applies to this Extension of Coverage:

The Limit of Insurance shown in the Summary of Coverages for this Extension of Coverage is a per occurrence limit and is the most we will pay under this Extension of Coverage for all damages arising out of any one collision.

8.3. ADDITIONAL EXCLUSIONS

This insurance does not apply to:

8.3.1. Loss of use of property owned by the Insured;

8.3.2. **Property damage** resulting directly or indirectly from the breaking, burning out or disrupting of any electrical machine not located within the **elevator**; or

8.3.3. **Property damage** resulting directly or indirectly from fire, however caused.

8.4. DEFINITIONS

For the purposes of this Extension of Coverage:

8.4.1. **Elevator** means:

8.4.1.1. Any hoisting or lowering device to connect floors or landings, whether or not in service, and all accessories of such hoisting or lowering devices, including any elevator car, platform, shaft, hoistway, stairway, runway, power equipment and machinery, but shall not include:

8.4.1.1.1. Any bearing platform not exceeding nine square feet used exclusively for carrying property;

8.4.1.1.2. Hod or material hoists used in connection with alterations, construction or demolition operations; or 8.4.1.1.3. Inclined conveyers used exclusively for carrying property.

8.4.1.2. Any hoist used for raising or lowering **automobiles** for lubricating and servicing; which is owned, rented, occupied, or used by you or is in your care, custody or control.

8.4.2. **Property insured** means property carried on an **elevator**, other than any hydraulic or mechanical hoist used for raising or lowering **automobiles** for lubricating or servicing, which is owned, leased or used by you or in your care, custody or control.

9. LIMITED COVERAGE FOR FAILURE OF PRODUCT OR WORK TO MEET WRITTEN SPECIFICATIONS

9.1. INSURING AGREEMENT

We will pay those sums that the Insured become legally obligated to pay as **compensatory damages** because of an **error** committed in the course of your **business operations** to which this insurance applies only if:

9.1.1. The **error** takes place in the **coverage territory**;

9.1.2. The **error** occurs during the **policy period**; and

9.1.3. Prior to the **policy period**, no Insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** of the Commercial General Liability Max Form and no **employee** authorized by you to give or receive notice of an **occurrence** or claim, knew that the **error** had occurred.

9.2. DEDUCTIBLE

Our obligation to pay **compensatory damages** on the Insured's behalf applies only to the amount of **compensatory damages** in excess of the \$1,000 deductible applicable to this Extension of Coverage.

9.3. EXCLUSIONS

This insurance does not apply to:

9.3.1. Any claim arising out of or relating to **bodily injury, personal injury or advertising injury**;

9.3.2. Any claim arising out of or relating to **property damage** unless otherwise covered by this Extension of Coverage. This exclusion does not apply to loss of use of tangible property that is not physically damaged if the loss of use results from the failure of **your product or your work** to meet the **written specifications**;

9.3.3. Any claim arising out of **written specifications** that were not provided by the person or organization to whom the manufactured goods or products are sold;

9.3.4. Any claim arising out of any defect, deficiency or mistake in **written specifications**;

9.3.5. Any claim for costs or expenses incurred by any Insured for the repair or replacement of defective materials or workmanship in **your work**;

9.3.6. Any claim for an amount in excess of the cost for repair or replacement of **your product or your work** or the price at which **your product or your work** was sold to the customer, whichever is less;

9.3.7. Any claim arising out of or relating to cost guarantees, cost estimates or estimates of

probable costs being exceeded; 9.3.8. Any claim for the return of all or any part of payments made to you by your customers for **your product or your work**;

9.3.9. Any liability assumed by any Insured under any written or verbal contract or agreement. This exclusion does not apply to a representation or warranty that **your product or your work** will substantially conform to the **written specifications**;

9.3.10. Any loss, cost or expense incurred by you or others arising out of or relating to the withdrawal or recall of **your work or your product or impaired property**, if such work or product or property is withdrawn or recalled from the market or from use by any person or organization because of a known defect, deficiency, inadequacy or dangerous condition in it;

9.3.11. Any dishonest, fraudulent, criminal or malicious act by or on behalf of any Insured or any person or organization for which the Insured is legally responsible;

9.3.12. Any **error** that occurred prior to the effective date of this Policy if any Insured at the effective date knew or could have reasonably foreseen that such an **error** might result in a claim or **action**;

9.3.13. Any **error** expected or intended by any Insured;

9.3.14. Any claim resulting from the actual or alleged violation of any anti-trust, restraint of trade, unfair trade practice, securities or other consumer protection law by an Insured;

9.3.15. Any **error** related to or arising from any actual or alleged liability for any legal remedy of any kind whatsoever (including damages, interest, mandatory or other injunctive relief, statutory orders or penalties, legal or other costs, or expenses of any kind) in respect of actual or threatened loss, damage, cost or expense directly or indirectly caused by, resulting from, in consequence of or in any way involving, asbestos or any materials containing asbestos in whatever form or quantity.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

9.3.16.

9.3.16.1. Any **error** or any other cost, loss or expense incurred by others, arising directly or indirectly from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any **fungi or spores** however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, clean up, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of **fungi or spores**;

9.3.16.2. Any supervision, instructions, recommendations, warnings, or advice given or which should have been given in connection with sub-paragraph 9.3.16.1. above; or

9.3.16.3. Any obligation to pay damages, share damages with or repay someone else who must pay damages because of such **error** referred to in sub-paragraph 9.3.16.1. or 9.3.16.2. above.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

9.3.17.

9.3.17.1. Liability imposed by or arising from any nuclear liability act, law or statute, or any law amendatory thereof;

9.3.17.2. Any **error** with respect to which an Insured under this Policy is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability;

9.3.17.3. Any **error** resulting directly or indirectly from the **nuclear energy hazard** arising from:

9.3.17.3.1. The ownership, maintenance, operation or use of a **nuclear facility** by or on behalf of an Insured;

9.3.17.3.2. The furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**; or

9.3.17.3.3. The possession, consumption, use, handling, disposal or transportation of **fissionable substances**, or of other **radioactive material** (except radioactive isotopes, away from a **nuclear facility**, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

9.3.18.

9.3.18.1. Any **error** arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**;

9.3.18.2. Any loss, cost or expense arising out of any:

9.3.18.2.1. Request, demand, order or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize or in any way respond to, or assess the effects of, **pollutants**; or

9.3.18.2.2. Claim or **action** by or on behalf of a governmental authority for **compensatory damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating or neutralizing or in any way responding to, or assessing the effects of, **pollutants**.

9.3.19. Any **error** due to the rendering of or failure to render by you or on your behalf of any **professional services** for others, or any error or omission, malpractice or mistake in providing those services. This exclusion does not apply to coverage provided by this Form because of an **error** committed in the course of your **business operations** to which this insurance applies;

9.3.20. Any **error** arising out of or related to the provision of consulting, advice, opinions, design or any other services in connection with any provincial Building Code(s) Regulation or Legislation;

9.3.21. Any **error** arising directly or indirectly, in whole or in part, out of **terrorism** or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate **terrorism**.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

9.3.22. Any **error** arising directly or indirectly, in whole or in part, out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.

This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the **error**.

9.4. DEFINITIONS

For the purposes of this Extension of Coverage:

9.4.1. **Business operations** means your operations described in the Declaration Page(s).

9.4.2. **Error** means any error, omission or negligent act by or on behalf of any Insured which results in the failure of **your product** or **your work** to meet the specifications described in **written specifications**, after final acceptance of **your product** or **your work** by your customer.

9.4.3. **Written specifications** means written specifications as to the nature and content of **your product** or **your work** purchased from the Insured, which are provided in advance by an Insured to the customer to whom **your product** or **your work** is being offered for sale.

10. LIMITED POLLUTION LIABILITY COVERAGE (120 HOURS)

Exclusion 4. **POLLUTION** under **COMMON EXCLUSIONS – COVERAGES A, B, C AND D** of **SECTION I - COVERAGES** from the Commercial General Liability Max form, is deleted and replaced by the following:

This insurance does not apply to:

4. POLLUTION

4.1. **Bodily injury, property damage or personal injury** arising out of the actual, alleged or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**:

4.1.1. At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any Insured. However, this sub-paragraph does not apply to:

4.1.1.1. **Bodily injury** if sustained within a building and caused by smoke, fumes, vapour or soot from equipment used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

4.1.1.2. **Bodily injury or property damage** for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional Insured with respect to your ongoing operations performed for that additional Insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any Insured, other than that additional Insured;

4.1.1.3. **Bodily injury or property damage** arising out of heat, smoke or fumes from, or fire extinguishing substances used to fight, a **hostile fire**; or

4.1.1.4. **Bodily injury or property damage** occurring at any premises, site or location situated in Canada and arising out of an unexpected or unintentional spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants** provided such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**:

4.1.1.4.1. Results in the injurious presence of **pollutants** in or upon land, the atmosphere, drainage or sewage system, watercourse or body of water; and

4.1.1.4.2. Is detected within 120 hours after the commencement of such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape; and

4.1.1.4.3. Is reported to us within 120 hours of the detection of such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape; and

4.1.1.4.4. Occurs in a quantity or with a quality that is in excess of that which is routine or usual to the business of the Insured;

4.1.2. At or from any premises, site or location which is or was at any time used by or for any Insured or others for the handling, storage, disposal, processing or treatment of waste;

- 4.1.3. Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
- 4.1.3.1. Any Insured; or
 - 4.1.3.2. Any person or organization for whom you may be legally responsible; or
- 4.1.4. At or from any premises, site or location on which any Insured or any contractors or subcontractors working directly or indirectly on any Insured's behalf are performing operations if the **pollutants** are brought on or to the premises, site or location in connection with such operations by such Insured, contractor or subcontractor. However, this subparagraph does not apply to:
- 4.1.4.1. **Bodily injury or property damage** arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of mobile equipment or its parts, if such fuels, lubricants or other operating fluids escape from a permanent and integral mobile equipment part designed to hold, store or receive them. This exception does not apply if the **bodily injury or property damage** arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such Insured, contractor or subcontractor;
 - 4.1.4.2. **Bodily injury or property damage** sustained within a building and caused by the release of gases, fumes or vapours from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor;
 - 4.1.4.3. **Bodily injury or property damage** arising out of heat, smoke or fumes from, or fire extinguishing substances used to fight, a **hostile fire**; or
 - 4.1.4.4. **Bodily injury or property damage** occurring at any premises, site or location situated in Canada and arising out of an unexpected or unintentional spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants** provided such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants**:
 - 4.1.4.4.1. Results in the injurious presence of **pollutants** in or upon land, the atmosphere, drainage or sewage system, watercourse or body of water; and
 - 4.1.4.4.2. Is detected within 120 hours after the commencement of such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape; and
 - 4.1.4.4.3. Is reported to us within 120 hours of the detection of such spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape; and
 - 4.1.4.4.4. Occurs in a quantity or with a quality that is in excess of that which is routine or usual to the business of the Insured; or
- 4.1.5. At or from any premises, site or location on which any Insured or any contractors or subcontractors working directly or indirectly on any Insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize, or in any way respond to, or assess the effect of **pollutants**.
- 4.2. Any loss, cost or expense arising out of any:
- 4.2.1. Request, demand, order or statutory or regulatory requirement that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize, or in any way respond to, or assess the effects of, **pollutants**; or
 - 4.2.2. Claim or **action** by or on behalf of a governmental authority for **compensatory damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating or neutralizing, or in any way responding to, or assessing the effects of, **pollutants**.
- However, this Section 4.2. does not apply to liability for **compensatory damages** because of **property damage** that the Insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or **action** by or on behalf of a governmental authority.

4.3. DEDUCTIBLE

- 4.3.1. Our obligation to pay **compensatory damages** for **bodily injury or property damage** and loss, cost or expense for **clean up** under this Extension of Coverage applies only to the amount in excess of the \$1,000 deductible applicable to this Extension of Coverage.
- 4.3.2. Regardless of the number of Insureds, claims or **actions**, the deductible amount applies to all **compensatory damages** because of **bodily injury or property damage** and loss, cost or expense for **clean up** arising out of a **pollution condition**.

4.4. ADDITIONAL DEFINITIONS

For the purposes of this Extension of Coverage:

- 4.4.1. **Clean up** means testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, decontaminating, stabilizing, remediating, neutralizing or in any way responding to or assessing the effect of **pollutants**.
- 4.4.2. **Pollution condition** means the actual, alleged, potential or threatened spill, discharge, emission, dispersal, seepage, leakage, migration, release or escape of **pollutants** into or upon real or personal property, land, the atmosphere or water of any description no matter where located or how contained, or into any watercourse, drainage or sewage system.

11. PENAL DEFENCE COSTS COVERAGE

11.1. INSURING AGREEMENT

We will pay for **legal costs** incurred by the Insured in the course of your **business operations**, in the defence of charges of a penal nature against the Insured under any law, provided that:

- 11.1.1. The Insured involved notifies us while this Policy is in force that they are the object of an inquiry or a charge has been laid against them or that they are compelled to stand trial or appear before a court of law; and
- 11.1.2. The Insured involved is not, in the end result, found guilty of an offence in respect of the charges laid or that such charges are withdrawn.

11.2. LIMITS OF INSURANCE

In addition to the provisions contained in the Limits of Insurance section shown in this Form, the following provisions apply to this Extension of Coverage:

11.2.1. The Per Offence Limit of Insurance shown in the Summary of Coverages in this Form is the most we will pay for the sum of **legal costs** under this Extension of Coverage arising out of any one offence. More than one offence involving the same charges or interrelated charges will be deemed to constitute a single offence.

11.2.2. The Aggregate Limit of Insurance shown in the Summary of Coverages in this Form is the most we will pay under this Extension of Coverage during the **policy period** for the sum of **legal costs** arising out of all offences.

11.2.3. The Per Offence Limit of Insurance applicable to this Extension of Coverage is a part of, and not in addition to, the Aggregate Limit of Insurance applicable to this Extension of Coverage.

11.3. EXCLUSION

This insurance does not apply to **legal costs** incurred in connection with any fact or circumstance known to the Insured prior to the effective date of this Policy (or of the initial policy issued by us if this Policy forms part of a continuous series of renewals).

11.4. SPECIAL CONDITIONS

In the event a single offence includes more than one charge, the reimbursement shall be prorated in the proportion that the number of charges for which you are found not guilty or which are withdrawn bears to the total number of charges.

11.5. DEFINITIONS

For the purposes of this Extension of Coverage:

11.5.1. **Business operations** means your operations described in the Declaration Page(s).

11.5.2. **Legal costs** means:

11.5.2.1. Attorneys' fees, subject to a maximum hourly rate of \$250;

11.5.2.2. Extrajudicial costs; and

11.5.2.3. Experts' fees, subject to a maximum of \$5,000.

12. PRODUCT RECALL EXPENSES

12.1. INSURING AGREEMENT

We will pay recall **expenses** if **your product** is withdrawn because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, provided that:

12.1.1. The recall takes place in the **coverage territory** and begins during the **policy period**;

12.1.2. The **expenses** are incurred and reported to us within twelve (12) months of the date on which the recall began;

12.1.3. The recall is necessary to avoid **bodily injury, property damage, personal injury or advertising injury**; and

12.1.4. The recall has been ordered by either the manufacturer, a government entity, a legislative authority or arises out of a determination by you.

12.2. DEDUCTIBLE

Our obligation under this Extension of Coverage to pay **expenses** applies only to the amount of product recall **expenses** in excess of the \$1,000 deductible applicable to this Extension of Coverage.

12.3. EXCLUSIONS

This insurance does not apply to expenses incurred for the recall or withdrawal of your product by reason of:

12.3.1. Loss of customer confidence or any **expenses** incurred to regain customer confidence or other consequential loss;

12.3.2. Prior knowledge of the Insured at the inception of this Policy of any defect, deficiency, inadequacy or dangerous condition in **your product** known to you when such products were still in your possession, or the cost of rectifying said defect, deficiency, inadequacy or dangerous condition in **your product**.

12.4. SPECIAL CONDITIONS

12.4.1. You must, as soon as a recall is believed to be necessary or notified that **your product** must be withdrawn:

12.4.1.1. Notify us in writing immediately without delay; and

12.4.1.2. Assist us and any experts appointed by us in the investigation of any matter relative to the Insuring Agreement and Exclusions of this Extension of Coverage.

12.5. DEFINITIONS

For the purposes of this Extension of Coverage:

12.5.1. **Expenses** means the reasonable and necessary costs incurred:

12.5.1.1. For communications, including radio and television announcements and printed advertisements;

12.5.1.2. For telephone communications, stationery, envelopes, producing and printing announcements and postage;

12.5.1.3. For rental expenses for the shipping of, and additional warehouse space for, **your product**;

12.5.1.4. For cost to hire extra personnel or specialists on a temporary basis;

12.5.1.5. For overtime pay for regular **employees**;

12.5.1.6. By **employees**, including transportation or accommodation;

12.5.1.7. For reasonable legal fees incurred by you;

12.5.1.8. For destruction of **your product**, if such action is deemed to be absolutely essential; and

12.5.1.9. For inspection of the recalled product on the customer's premises or at the nearest appropriate place by you or on your behalf;

but only when such **expenses** are incurred exclusively for the purpose of recalling or withdrawing **your product**.

13. TRADEMARK INFRINGEMENT

13.1. INSURING AGREEMENT

13.1.1. Notwithstanding any contrary provision contained under the Commercial General Liability Max Form, we will pay those sums that the Insured becomes legally obligated to pay as **compensatory damages** because of **trademark infringement**

to which this insurance applies.

- 13.1.2. This Extension of Coverage applies to **trademark infringement** caused by an offence committed in your **advertisement** but only if the offence was committed in the **coverage territory** during the **policy period**. We will consider any series of related or similar offences to be one offence.

13.2. ADDITIONAL EXCLUSIONS

This insurance does not apply to trademark infringement:

- 13.2.1. Arising out of publication of material, if done by or at the direction of the Insured with knowledge of its falsity;
- 13.2.2. Arising out of publication of material whose first publication took place before the beginning of the **policy period**;
- 13.2.3. Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the Insured;
- 13.2.4. For which the Insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for **compensatory damages** that the Insured would have in the absence of the contract or agreement;
- 13.2.5. Arising out of a failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract;
- 13.2.6. Arising out of an infringement of patent by use thereof on or in connection with goods, products, or services sold, offered for sale or advertised;
- 13.2.7. Arising out of an incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised; or
- 13.2.8. Arising out of any offence committed by any Insured whose business is:
 - 13.2.8.1. Advertising, broadcasting, publishing or telecasting;
 - 13.2.8.2. Designing or determining content of web-sites for others; or
 - 13.2.8.3. An Internet search, access, content or service provider.However, this exclusion 13.2.8. does not apply to:
 - 13.2.8.4. False arrest, detention or imprisonment;
 - 13.2.8.5. Malicious prosecution;
 - 13.2.8.6. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

13.3. DEFINITIONS

For the purposes of this Extension of Coverage:

Trademark infringement means injury other than **bodily injury, property damage, personal injury or advertising injury** arising out of one or more of the following offences committed in the course of advertising of your goods, products or services:

Infringement of:

- 13.3.1. Trademark;
- 13.3.2. Service mark;
- 13.3.3. Trade secret;
- 13.3.4. Trade name;
- 13.3.5. Trade dress;
- 13.3.6. Title;
- 13.3.7. Slogan; or
- 13.3.8. Internet domain name.

All other terms and conditions of the Policy remain unchanged.