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## Engineering Project Insurance Policy

Type 2:

- Material Damage
- Third Party Liability
- Delay in Start-up

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**Policy****No.**

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## Engineering Project Insurance Policy

### **1 Principle Operative Clauses**

In consideration of the Insured having submitted a proposal and paid or agreed to pay the premium specified in the Schedule to the Insurers named herein.

The Insurers hereby severally agree, each for their proportion set out herein, to indemnify the Insured in the manner and to the extent hereinafter stated against loss, damage or liability occurring during the Period of Insurance or any subsequent period as may be mutually agreed between the Insured and the Insurers, provided that

- (a) the liability of the Insurers shall not exceed the Sums Insured and Limits of Liability set down in the Schedule in respect of or arising from any one accident or series of accidents, consequent upon or attributable to one source or original cause;
- (b) the liability of each of the Insurers individually shall be limited to the proportion set against its name below;
- (c) the Insureds shall bear, for their own account, the amounts set forth in the Schedule as the Deductibles.

In witness whereof, the undersigned, acting on behalf of and under the authority of each of the Insurers respectively, have subscribed their names.

**The Insurers**

The Insurers	Reference Numbers	Percentage Share of the Policy	Date	Signature
.....	.....	.....	.....	..... %
.....	.....	.....	.....	..... %
.....	.....	.....	.....	..... %
.....	.....	.....	.....	..... %
.....	.....	.....	.....	..... %
		<b><u>100.00</u></b>		<b><u>100.00</u></b> %

**2 The Schedule**

**2.1 The Insured**

Employer

.....  
.....  
.....

Contractors

.....  
.....  
.....

Others

.....  
.....  
.....

**2.2 The Contract**

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.....  
.....  
.....

**2.3 The Construction Site**

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.....  
.....  
.....

**2.4 The Business of the Employer**

.....  
.....  
.....  
.....

**2.5 Period of Insurance**

Construction Period, inclusive of cold testing and .....weeks Hot Testing and Commissioning, from ..... to ..... being the Anticipated Date of Commencement of the Business, plus ..... months Maintenance Period.

In the event of any part of the permanent works being taken over or taken into use, the Construction Period, in respect of such works, will be deemed to have come to an end and in respect of Section 1 and 2 of the Policy the Maintenance Period (if applicable) to have commenced on the date of such taking over or taking into use.

## 2.6 Progress Reports

The Progress Reports, produced in accordance with the terms of Memorandum 5.3.5 shall be furnished to the Insurers at ..... monthly intervals during the Construction Period.

## 2.7 Sums Insured Section 1, Material Damage

Currency: .....

### ***Property Insured, Item 1(a)***

Works

- The permanent and temporary works constructed or erected in performance of the Contract including materials belonging to the Insureds, or for which they are responsible, brought on to the Construction Site for incorporation in the Contract.  
Total Contract Price  
.....
- Materials, services and labour supplied by the Employer  
.....

Total Works Sum Insured

.....

### ***Property Insured, Item 1(b)***

Construction Plant and Equipment, Temporary Buildings and Caravans

- Mobile Construction Plant and Equipment  
(new replacement value)  
.....
- Stationary Construction Plant and Equipment

(new replacement value)

.....

- Temporary Buildings and Caravans (market value)

.....

**Additional covers, Items 1(c) – 1(g)**

*Item 1(c)*

Removal of Debris in accordance with Memorandum 3.3.3 to Section 1:

Sum Insured in respect of each and every accident

.....

....

*Item 1(d)*

Professional Fees in accordance with Memorandum 3.3.4 to Section 1:

Sum Insured in respect of each and every accident

.....

....

*Item 1(e)*

Inland Transits in accordance with Memorandum 3.3.5 to Section 1:

Sum Insured in respect of each and every accident

.....

....

*Item 1(f)*

Off-site Storage in accordance with Memorandum 3.3.6 to Section 1:

Sum Insured in respect of each and every accident

.....

....

*Item 1(g)*

Expediting Expenses in accordance with Memorandum 3.3.11 to Section 1:

Sum Insured in respect of each and every accident subject to a percentage of the relevant costs of ..... percent

.....

....

**2.8 Limits of Liability Section 2, Third Party Liability**

Currency: .....

The liability under this Section for all damages payable to any one claimant or any number of claimants in respect of or arising from any one accident or in respect of or arising from all accidents of a series consequent upon or attributable to one source or original cause shall not exceed

.....

....

nor shall the liability hereunder for all damages in the aggregate in respect of two or more such accidents during the Period of Insurance exceed

.....

....

**2.9 Sums Insured Section 3, Delay in Start-up**  
Currency: .....

***Business Insured, Item 3(a)***

Debt Servicing Costs, Fixed Costs, Net Profit

- Debt Servicing Costs, i.e. the interest, scheduled principal payments, fees and the like in respect of advances made or monies borrowed by the Employer:

Annual Sum Insured

.....

- Fixed Costs i.e. the fixed operation and management costs and fees and costs for essential services:

Annual Sum Insured

.....

- Net Profit: Annual Sum Insured

.....

....

- Delay in Start-up: Annual Sum Insured

.....

....

- Delay in Start-up:  
Sum Insured for the Maximum Period of Indemnity of ..... months

.....

....

***Additional Cover, Item 3(b)***

Auditors Fees

Auditors Fees in accordance with Memorandum 5.3.4 to

Section 3:  
Sum Insured

.....

.....

**2.10 Deductibles**

Currency:

.....

***Section 1, Item 1(a)***

Works

In respect of each and every accident arising:

- from storm, tempest, hurricane, cyclone, flood, water damage, subsidence, landslip and collapse

.....

.....

- from earthquake, volcanic activity and tsunami

.....

- from all other perils other than during Hot Testing and Commissioning and Maintenance Period

.....

- from all other perils during Hot Testing and Commissioning

.....

- from all other perils during Maintenance Period

.....

***Section 1, Item 1(b)***

Construction Plant and Equipment, Temporary Buildings and Caravans

In respect of each and every accident to:

- Mobile Construction Plant and Equipment

.....

- Stationary Construction Plant and Equipment

.....

- Temporary Buildings and Caravans

.....





**2.12 Deposit Premium and Taxes**

Currency:

.....

*Section 1*

Item 1 (a), including additional covers

.....

Item 1 (b), including additional covers

.....

*Section 2*

.....

*Section 3*

....

.....

Total Deposit Premium due at inception

.....

....

Taxes ..... %

.....

....

Total

.....

....

The total Deposit Premium due under this Policy is adjustable in accordance with the terms of the General Conditions herein.

**2.13 Applicable Law**

In accordance with General Condition 8.13, the Applicable Law shall be as stated below:

.....

.....

**2.14 Claims Notification**

In accordance with General Condition 8.6, all potential claims under this policy should be notified to:

.....  
.....  
.....  
.....  
.....

Telephone no.

.....

Fax no.

.....

.....  
E-mail

.....

.....

### **3 Section 1, Material Damage**

#### **3.1 Insuring Clauses**

The Insurers will indemnify the Insured, subject to the terms, exceptions and conditions contained herein, against accidental physical loss of or accidental physical damage to any of the Property Insured described in the Schedule, occurring during the Period of Insurance, and which is due to any cause whatsoever other than those excluded, while such property is at the Construction Site and used or to be used in connection with the Contract.

In the event of any indemnifiable loss or damage, the amount payable hereunder shall not reduce the respective Sums Insured stated in the Schedule, and thus this insurance will be maintained in full during the currency of the Policy.

#### **3.2 Exclusions to Section 1**

Insurers shall not be liable for:

- (a) all costs due to defects of materials or workmanship and/or stemming from errors in design, plans and specifications. However, should accidental physical loss or accidental physical damage occur to any part of the Property Insured as set out in the Schedule containing any of the said defects or errors, the costs of replacement or rectification, which are hereby excluded, are understood as those costs which would have been incurred if replacement or rectification of the Property Insured had been effected immediately prior to the said loss or damage;
- (b) the cost of replacing, repairing or rectifying parts of the Property Insured rendered necessary by wear and tear, corrosion, oxidation, and deterioration due to lack of use or to normal atmospheric conditions, but this exclusion shall not apply to other parts of the Property Insured physically damaged as a result of such wear and tear, corrosion, oxidation or deterioration;
- (c) loss of use, penalties and guarantees of performance and efficiency;
- (d) consequential losses of any kind;
- (e) loss of or damage to accounts, bills, cash, currency, stamps, banknotes, evidences of debt, deeds or securities;
- (f) loss of any Property Insured arising from disappearance or shortage, discovered only at the time of taking an inventory, unless such inventory is taken to confirm an otherwise indemnifiable accident hereunder;
- (g) the costs of repair or replacement of parts of Construction Plant or Equipment directly due to mechanical or electrical breakdown, derangement or explosion;

- (h) loss of or damage to any mechanically driven vehicle, licensed for use on a public road or while operating in circumstances requiring insurance in accordance with local legislation;
- (i) loss of or damage to any marine vessel or craft or aircraft and to any plant or equipment on or in such vessel or craft, except pontoons and boats up to 10 metres in length and any plant or equipment on or in such pontoons and boats;
- (j) normal making good, normal upkeep;
- (k) loss of or damage to catalysts, consumables, chemicals and feedstock;
- (l) loss of or damage to refractory and other linings due to or arising from the direct application of heat.

### **3.3 Memoranda to Section 1**

#### **3.3.1 Basis of Indemnity**

In the event of loss or damage as insured under Section 1, the basis of indemnity shall be as follows:

- (a) in respect of damage which can be repaired, the cost of repairs necessary to restore the Property Insured to its condition immediately before the occurrence of the loss or damage, less the value of any salvage; or
- (b) in respect of total loss or destruction, the cost of reconstruction or replacement of the Property Insured by property substantially the same as, but not better or more extensive than, that lost or destroyed, less the value of any salvage.

If the anticipated cost of repairs equals or exceeds the cost of reconstruction or replacement, the indemnity shall be as described in (b) above. The cost of any temporary repairs will be borne by the Insurers, provided such repairs do not increase the total repair costs that would otherwise have been incurred.

Subject to General Condition 8.6, Claims, all repairs, reconstruction or replacement shall take place with reasonable dispatch, and the costs recoverable shall be those actually incurred (which shall be confirmed by the production of settled invoices, accounts or other documents as may be required by the Insurers), together with justifiable contributions towards overheads and net profit, both of which must be directly relevant in the circumstances and agreed by the Insurers.

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

In respect of any indemnifiable loss or damage, the Insurers agree to make reasonable payments on account.

### **3.3.2 Maintenance Period**

Notwithstanding anything contained herein to the contrary, this Policy does not cover loss or damage to the Works, occurring or arising during the Maintenance Period, except when:

- (a) arising from a cause occurring on the Construction Site during the Construction Period; or
- (b) caused by an insured Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under the maintenance clauses of the Contract.

However, the cover provided by this Memorandum shall not include loss or damage caused by or arising out of actions or omissions of the insured Contractor(s) in connection with training, supervision, instruction or normal upkeep and plant management duties during the Employer's business operation of the permanent works, or any part thereof.

### **3.3.3 Removal of Debris**

This Policy will indemnify the Insured, up to the Sum Insured specified in Item 1(c) in the Schedule, for the costs and expenses necessarily and reasonably incurred in the removal, from the location of any accidental physical loss or accidental physical damage, and disposal of debris of any of the Property Insured provided that such loss or damage, giving rise to such debris, is insured by Section 1.

### **3.3.4 Professional Fees**

This Policy will indemnify the Insured, up to the Sum Insured specified in Item 1(d) in the Schedule, in respect of architects, surveyors, consulting engineers and other professional fees, necessarily and reasonably incurred in the repair, reconstruction or replacement of the Property Insured consequent to accidental physical loss or accidental physical damage indemnified, provided that (a) fees for preparing any claim under this Policy are excluded hereby, and (b) the amount payable under the terms of this Memorandum shall not exceed the scale of fees in normal use by such professions.

### **3.3.5 Inland Transits**

Notwithstanding anything contained herein to the contrary and subject otherwise to all the Policy terms and conditions, this Policy will indemnify the Insured, up to the Sum Insured specified in Item 1(e) in the Schedule, in respect of accidental physical loss of or accidental physical damage to Property Insured, while said property is being transported on any vehicle (including loading and unloading) to the Construction Site or temporary off-site storage facilities, other than during ocean marine or air transit, provided that (a) said property is owned, or is in the custody, care or control of the Insured; (b) the transits insurance hereunder shall only indemnify the Insured to the extent that such loss or damage is not recoverable under any other insurance, and (c) such transits take place within the country in which the Construction Site is located.

### **3.3.6 Off-site Storage**

Notwithstanding anything contained herein to the contrary and subject otherwise to all the Policy terms and conditions, this Policy will indemnify the Insured, up to the Sum Insured specified in Item 1(f) in the Schedule, in respect of accidental physical loss of or accidental physical damage to Property Insured, while said property is in temporary storage off the Construction Site, except while at any manufacturers or suppliers premises prior to delivery to the Construction Site, provided that (a) said property is owned, or is in the custody, care or control of the Insured; (b) the off-site storage insurance hereunder shall only indemnify the Insured to the extent that such loss or damage is not recoverable under any other insurance, and (c) such off-site storage takes place within the country in which the Construction Site is located.

### **3.3.7 50/50 Sharing**

The Insured shall inspect all items comprising the Property Insured, upon arrival at the Construction Site.

In the case of unpacked property where loss or damage is evident, such loss or damage is excluded under this Policy, unless it is indemnified under the terms of the cover provided by Memorandum 3.3.5 Inland Transits or Memorandum 3.3.6 Off-site Storage.

In the case of packed property (which is intended to remain in its packing until a later date), the packing is to be inspected and in the event of any visible signs of loss or damage, the property contained therein is to be promptly unpacked and inspected. Any loss or damage to such property which is thus discovered is excluded under this Policy, unless it is indemnified under the terms of the cover provided by Memorandum 3.3.5 or 3.3.6.

In the event the packing of the property manifests no sign of loss or damage and the property is therefore temporarily left packed, any loss or damage which is discovered when the property is unpacked will be deemed to have occurred during transit or off-site storage, unless there is clear evidence from the nature of the

loss or damage that it could only have occurred after arrival at the Construction Site.

However, if it is not possible to determine when the loss or damage occurred and such loss or damage is not indemnifiable under Memorandum 3.3.5 or 3.3.6, this Policy will pay for 50% of the indemnity, otherwise due hereunder, as if the loss or damage had occurred during the Construction Period, subject to the deduction of 50% of the Deductible.

### **3.3.8 Plans and Documents**

In the event of accidental physical loss or accidental physical damage as indemnified under this Section to plans, drawings, files, documents, manuscripts, or computer system records forming part of the Property Insured, it is agreed that the indemnity hereunder shall include the cost of labour and computer time expended in reproducing such property, including any expenses incurred in producing the information contained thereon, but (a) shall not include any loss suffered by the Insured due to the distortion or nonavailability of such information; (b) shall not exceed in respect of any one accident, 1% of the Total Contract Price as specified in the Schedule.

### **3.3.9 20 % Escalation**

Notwithstanding anything contained herein to the contrary, it is agreed that if during the Construction Period the value of the Works shall exceed the Total Works Sum Insured as specified in the schedule, the relevant Total Works Sum Insured shall be increased automatically so that it is equal to such value, subject, however, to the increase not exceeding in any case 20% of the Total Works Sum Insured.

### **3.3.10 72 Hours Clause**

In the event of any accidental physical loss of or accidental physical damage to the Property Insured (whether in the course of being repaired or not) caused by or due to storm, tempest, hurricane, cyclone, water damage, flood, earthquake, tsunami, or volcanic activity during the Construction Period, as indemnifiable under Section 1, and occurring during any one period of 72 consecutive hours, it is agreed that such loss or damage is deemed to be one occurrence and, moreover, that the commencement of any such 72 consecutive hours period may be decided by the Insured, provided that no overlapping occurs in any two or more such periods.

### **3.3.11 Expediting Expenses**

Notwithstanding anything contained herein to the contrary, the Insurers hereby agree to indemnify the Insured, up to the Sum Insured stated in Item 1(g) in the

Schedule, in respect of the difference in costs between those calculated at normal or standard rates of reimbursement, and those actually incurred for overtime, weekend, public holiday and shift working, and for express freight (other than air freight); provided that:

- (a) such costs are necessarily and reasonably incurred by the Insured for the purpose of preventing or minimising any delay in completion of the Contract solely due to accidental physical loss or damage as indemnified under Section 1; and
- (b) such costs shall not exceed the percentage of the relevant costs specified in the Schedule that would have been indemnified had this Memorandum not applied.

It is agreed that the cover provided by this Memorandum does not include any costs incurred in altering or improving the design, the materials used or to be used, or the workmanship relating to the permanent or temporary works.

## **4 Section 2, Third Party Liability**

### **4.1 Insuring Clauses**

The Insurers will indemnify the Insured, subject to the terms exceptions and conditions contained herein, against all sums which the Insured shall become liable to pay for damages in respect of

- (a) accidental bodily injury to or illness or death of any person or
- (b) accidental loss of or damage to physical property

occurring during the Period of Insurance and arising out of the performance of the Contract at, or in close proximity to, the Construction Site.

The Insurers will also pay, in respect of any claim which may be the subject of indemnity under this Section:

- (A) all legal costs and expenses recovered by any claimant from the Insured; and
- (B) all legal costs and expenses incurred with the written consent of the Insurers, provided that
  - (a) the liability of the Insurers in respect of damages under this Section of the Policy shall not exceed the Limit of Liability stated in the Schedule; and
  - (b) the Insurers may, at any time, pay to the Insured the Limit of Liability (after deduction of any sum or sums paid as damages) or any lesser amount for which any such claim or claims can be settled and upon such payment the Insurers shall relinquish the conduct and control of and be under no further liability under this Section in connection with such claim or claims, except for legal costs and expenses recoverable by any claimant from the Insured or incurred with the written consent of the Insurers in respect of matters prior to the date of such payment.

## 4.2 Exclusions to Section 2

The Insurers will not indemnify the Insured in respect of:

- (a) liability resulting from bodily injury sustained by any person and arising from or in the course of his employment by the Insured under a contract of labour, service or apprenticeship with the Insured;
- (b) liability compulsorily insurable under any legislation governing the use of motor vehicles;
- (c) liability resulting from, attributable to or caused by the ownership or possession of or use by or on behalf of the Insured of (a) any mechanically driven vehicle except when such vehicle is on the Construction Site and is not insured under a specific motor vehicle or any other insurance policy; or (b) any water-borne vessel or craft, or of any aircraft, except pontoons and boats up to 10 metres in length;
- (d) liability for damages caused by or arising from pollution or contamination of buildings or other property or of water or land or the atmosphere, unless the pollution or contamination is caused by a sudden identifiable unintended and unexpected accident which takes place in its entirety at a specific moment in time and place during the Period of Insurance;
- (e) the cost of repairing, replacing or making good any loss of or damage to the Works, Construction Plant and Equipment, Temporary Buildings and Caravans, and any property belonging to or in the care, custody, or control of any of the insured parties, irrespective of whether any said aforementioned property forms part of the Property Insured;
- (f) any consequential financial losses directly sustained by any of the parties to the Contract including the Employer, irrespective of whether or not insured hereunder, due to or arising from loss or damage to the Works, Construction Plant and Equipment, Temporary Buildings and Caravans;
- (g) liability arising under penalty or liquidated damages clauses in any contract, or any punitive or exemplary damages;
- (h) liability assumed under contract which imposes upon the Insured liability which would not otherwise have been incurred by the Insured;
- (i) liability arising out of technical or professional advice given by the Insured or by any person acting on behalf of the Insured;
- (j) liability (other than accidental bodily injury to any person) due to or arising from damage to physical property caused by subsidence, collapse, cracking, fracturing, vibration, or the weakening or removal of support;
- (k) liability due to or arising from damage to underground pipe or cable services or other underground property or facilities.

### **4.3 Memoranda to Section 2**

#### **4.3.1 Cross Liability**

Each of the parties comprising the Insured shall, for the purpose of this Section of the Policy, be considered as a separate and distinct entity and the words "the Insured" shall be considered as applying to each party in the same manner as if a separate policy had been issued to each of the said parties, provided nevertheless that nothing in this Memorandum shall be deemed to increase the Limits of Liability in respect of any one accident or all accidents of a series as stated in the Schedule.

#### **4.3.2 Maintenance Period**

Notwithstanding anything contained herein to the contrary, this Policy does not cover bodily injury or damage, as set forth in Section 2, occurring or arising during the Maintenance Period, except when caused by an insured Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under the maintenance clauses of the Contract.

However, the cover provided by this Memorandum shall not include bodily injury or damage caused by or arising out of actions or omissions of the insured Contractor(s) in connection with training, supervision, instruction or normal upkeep and plant management duties during the Employer's business operation of the permanent works, or any part thereof.

## **5. Section 3, Delay in Start-up**

### **5.1 Insuring Clause**

The Insurers will indemnify the Employer, subject to the terms, exceptions and conditions contained herein, in respect of the actual loss sustained as a result of a delay beyond the Anticipated Date of Commencement of or interference with the Business, hereinafter referred to as the Delay, provided that

the Delay is the result of one or more interruption(s) or interference(s) in the construction and/or testing programme caused by loss or damage indemnifiable under Section 1 Material Damage to the Property Insured specified under item 1(a) Works of the Schedule.

### **5.2 Exclusions to Section 3**

Insurers shall not be liable for:

- (A) any loss sustained due to any delay caused by or resulting from:
  - (a) loss of or damage to Construction Plant and Equipment, Temporary Buildings and Caravans;
  - (b) loss of or damage to Existing Property;
  - (c) loss of or damage to any property held in care, custody or control of the Insured;
  - (d) loss of or damage to operating media or feedstock;
  - (e) shortage, destruction, deterioration of or damage to any materials necessary for the Business;
  - (f) any condition or restriction imposed by a public authority;
  - (g) non-availability of funds;
  - (h) alterations, additions, improvements, rectification of defects or faults or elimination of any deficiencies;
  - (i) loss of or damage to items taken over or taken into use by the Employer;
  - (j) loss or damage occurring after the Construction Period has ceased;
  - (k) Third Party Liability claims;

- (B) loss of business due to suspension, lapse or cancellation of lease, licence or order which occurs after the date of actual commencement of the Business;
- (C) any penalties or damages of whatever nature for breach of contract or for late or non-completion of orders.

### **5.3 Memoranda to Section 3**

#### **5.3.1 Basis of Indemnity**

The amount payable as indemnity under Section 3 shall be:

- (a) the Debt Servicing Costs and/or the Fixed Costs that would have been payable and/or the Net Profit that would have been earned out of the revenue had the Delay not occurred, as insured under Item 3(a); and/or
- (b) the Increased Cost of Working being defined as the expenditure necessarily and reasonably incurred by the Employer or any other party on his behalf for the sole purpose of avoiding or diminishing the amount which the Insurer would have been liable to pay under (a) above, but not exceeding the sum by which the amount otherwise payable is reduced.

The amount payable shall be deemed as the most economically favourable indemnity corresponding to (a) or (b) or a combination thereof and shall not exceed the annual Delay in Start-up Sum Insured specified in Item 3 (a) in the Schedule calculated pro rata temporis for the Period of Indemnity.

#### **5.3.2 Period of Indemnity**

The Period of Indemnity begins with the date upon which, had the Delay not occurred, the Business would have commenced, but not prior to the Anticipated Commencement Date of the Business, and ends with the actual date the Business is commenced.

The Period of Indemnity shall not exceed the length of time it takes with the exercise of due diligence and dispatch to repair, reconstruct or replace such part of the Property which has been lost or damaged nor the Maximum Period of Indemnity stated in the Schedule.

The Business shall be deemed to have commenced on the date of the Certificate of Practical Completion, or upon handover to the Employer, or the taking over by the Employer (whichever shall occur first) of the

permanent works, or of any part thereof which shall be capable (at that date) of earning Revenues.

### **5.3.3 Time Deductible**

The monetary amount corresponding to the Time Deductible shall be calculated by multiplying the average daily value of loss sustained during the Period of Indemnity by the number of days agreed upon as the Time Deductible and shall be deducted from the amount payable.

### **5.3.4 Auditor's Fees**

The Insurers will indemnify the Insured, up to the Sum Insured specified in Item 3(b) to this Section in the Schedule, in respect of the reasonable fees payable by the Insured to their auditors for producing and certifying any particulars or details contained in the Insured's books of account or other documents, or such other proofs, information or evidence as may be required by the Insurers under the terms of General Condition 8.6.

### **5.3.5 Progress Reports**

The Insured shall submit Progress Reports to the Insurers at the intervals stated in the Schedule. Each such report shall be submitted within 14 days of the end of the period which it relates to. Reasons for any delay that has occurred since the last report shall be advised, together with the latest revised construction and testing programme.

### **5.3.6 Changes in the Status of the Business or in the Employer's Interest**

This Section of the Policy shall be voided if the Business be wound up or carried on by a liquidator or receiver or be permanently discontinued or the Employer's interest ceases.

## **6. General Exclusions**

### **6.1 War and Allied Perils**

This Policy does not cover any loss, damage or liability occasioned by or through or in consequence, directly or indirectly, of any of the following occurrences, namely:

- (a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war;
- (b) mutiny, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege, nationalisation, confiscation, requisition, seizure or loss of or damage to property by order of the government or by any public authority, and terrorism;
- (c) strike, riot, civil commotion and popular rising.

In any action suit or other proceedings where the Insurers allege that, by reasons of the provisions of this exclusion, any loss, damage or liability is not covered by this insurance, the burden of proving that such loss, damage or liability is covered shall be upon the Insured.

### **6.2 Nuclear Risks**

This Policy does not cover:

- (A) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- (B) 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;
  - (b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **6.3 Wilful Acts and Gross Negligence**

This Policy does not cover any loss, damage or liability directly or indirectly caused by or arising from or aggravated by any wilful act or omission or gross negligence of the Insured, or of his management including the Construction Site manager.

## **7 Special Conditions**

### **7.1 Full Insurance**

It is a condition of this Policy that the Sums Insured specified in the Schedule for Section 1 and Section 3 shall not be less than:

- (a) in respect of Section 1 Item 1(a), the anticipated Total Contract Price, without deduction of any costs; plus (if applicable) the anticipated full value of the materials, services and labour supplied by the Employer, as at completion of the Contract, during the whole of the Period of Insurance;
- (b) in respect of the relevant part of Section 1 Item 1(b), the sum of the new replacement values of the total inventory of all the Construction Plant and Equipment, during the whole of the Construction Period;
- (c) in respect of the relevant part of Section 1 Item 1(b), the sum of the market values of the total inventory of all the Temporary Buildings and Caravans, during the whole of the Construction Period;
- (d) in respect of Section 3 Item 3(a) the anticipated annual costs, during the whole of the Construction Period.

If it is found, in the event of accidental physical loss or accidental physical damage, that the Sum Insured (increased, if applicable, by the provisions of Memorandum 3.3.9 20% Escalation) is less than the respective full insurance sums as described above, then the amount recoverable hereunder by the Insured shall be reduced in such proportion as the Sum Insured bears to the full insurance sum to be insured by this Special Condition. Each item and part specified above is separately subject to this condition.

### **7.2 Defects**

For the purposes of Section 1 of this Policy, it is understood and agreed that any part or portion of the Property Insured shall not be regarded as having suffered accidental physical loss or accidental physical damage solely by virtue of the existence of any defect in materials or workmanship, or from any errors in the design, plans, or specifications.

### **7.3 Cessation of Work**

Notwithstanding anything contained herein to the contrary, it is a condition of this Policy that so far as any partial or total cessation of work is concerned, the Insured shall give immediate notice in writing to the Insurers if such a cessation is anticipated to exceed 30 calendar days.

## **8 General Conditions**

### **8.1 Unity of Policy**

The Schedule, Sections, Memoranda, Special Conditions, General Policy Exclusions, General Conditions and any other terms herein are deemed to be integral parts of this Policy, and any word or expression to which a specific meaning has been attached in any part shall bear such meaning wherever it may appear.

### **8.2 Due Observance of Policy Terms**

The due observance and fulfilment of the terms of this Policy insofar as they relate to anything to be done or complied with by the Insured shall be a condition precedent to any liability of the Insurers.

### **8.3 Material Change**

If at any time any change shall occur materially varying any of the facts relating to the Contract, its performance, this insurance or the degree of risk assumed hereunder, the Insured shall immediately give notice in writing of such change to the Insurers, supplying as soon as possible thereafter any further particulars as the Insurers may reasonably require.

In the event of a material increase in risk, the continuance of this insurance shall be at terms and conditions as agreed, in writing, between the Insured and the Insurers, but should the parties be unable to agree the new terms and conditions within two months of the Insurers initially advising the Insured of their requirements, the matter shall be referred to an expert to be appointed by the parties. Unless the parties otherwise agree, the expert shall be a person with not less than ten years experience of international insurance business, having been engaged in such business or in advising on such business in a professional capacity. However, if the parties cannot agree, the expert shall be appointed by the Chairman, for the time being, of AIDA Reinsurance and Insurance Arbitration Society of the UK (ARIAS), c/o The International Underwriting Association, 3 Minster Court, London EC3R 7DD.

The expert alone shall determine all questions of procedure and evidence in the hearing of this dispute, and all costs for the holding thereof shall be paid by the parties and in the manner as directed by the expert.

The expert shall apply the laws of the country or state of the Applicable Law.

The decision of the expert shall be given in writing, with reasons, and both parties hereby agree to be bound by the decision given in accordance with the above provisions.

#### **8.4 Reasonable Precautions**

The Insured shall take and cause to be taken for the full Period of Insurance all reasonable precautions for the safety of persons and property and the prevention of loss, damage or injury in the performance of the Contract. The Insured shall, in particular, take care in the selection of labour, comply with sound engineering practices, statutory requirements and manufacturers' recommendations, and take action to maintain all Construction Plant and Equipment in good working condition.

In the event of any accident giving rise to, or which may give rise to loss, damage or injury as covered by this Policy, the Insured shall take at his own expense such immediate action as is necessary to minimise any such loss, damage or injury, and to prevent any repetition in that or any other part of the Property Insured.

#### **8.5 Access and Inspection**

Representatives of the Insurers shall, at any reasonable time, have the right to inspect and examine all or any part of the Property Insured or the Construction Site in relation to the performance of the Contract. In addition, the representatives shall be provided by the Insured with such information pertaining to the risks insured by this Policy as may be reasonably requested.

#### **8.6 Claims**

In the event of any accident occurring, which might give rise to a claim under this Policy, the Insured shall:

- (a) immediately notify the Insurers by telephone or e-mail via the address specified in the Schedule, giving an indication as to the nature and extent of the loss, damage or injury, and confirm such advice in writing as soon as possible;
- (b) supply as soon as possible all such information and documentary evidence in relation to the claim as the Insurers may require;
- (c) preserve damaged Property Insured and make it available for inspection by a representative of the Insurers;
- (d) send to the Insurers, immediately after receipt, any writ, summons or other proceedings which may be commenced against the Insured;
- (e) inform the police authorities promptly in the event of loss or damage by theft, burglary or any malicious persons(s) for the purpose of recovering any property so lost, discovering the guilty person or persons, and having him, her or them duly prosecuted;
- (f) give to the Insurers every assistance to enable the Insurers to settle or resist any claim against the Insured, or institute any proceedings;

- (g) advise the Insurers of any other insurance(s) which may cover the same loss, damage or injury, or any part thereof.

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

The Insured shall not negotiate, pay, settle, admit or repudiate any claim under the Policy without the written consent of the Insurers, nor shall the Insured be entitled to abandon any property to the Insurers.

If a claim is made and rejected and no action, suit or reference to arbitration is commenced by the Insured within three months after such rejection, then, for all purposes, the claim shall be regarded as having been abandoned and shall not be recoverable under this Policy.

## **8.7 Subrogation**

The Insured shall, at the expense of the Insurers, do and concur in doing and permit to be done, all such acts and things as may be necessary or reasonably required by the Insurers for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the Insurers shall be or would become entitled or subrogated, upon their paying for or making good any loss, damage or injury under this Policy, whether such acts and things shall be or become necessary or required before or after the Insured's indemnification by the Insurers.

## **8.8 Arbitration**

If any difference arises as to the amount to be paid under this Policy (liability being otherwise admitted), such difference shall be referred to an arbitrator appointed by the parties in accordance with the statutory provisions in force in the country or state of the Applicable Law.

In the absence of any such statutory provisions, and unless the parties agree upon a single arbitrator within thirty days of one receiving a written request from the other for arbitration, the claimant shall appoint his arbitrator and give written notice thereof to the respondent. Within thirty days of receiving such notice, the respondent shall appoint his arbitrator and give written notice thereof to the claimant, failing which the claimant may apply to the appointor, hereinafter named, to nominate an arbitrator on behalf of the respondent.

Before entering upon the reference, the two arbitrators shall appoint a third arbitrator, but should they fail to do so within thirty days of the appointment of the respondent's arbitrator, then either of them, or either of the parties, may apply to the appointor for the appointment of the third arbitrator. The appointor shall be the Chairman, for the time being, of AIDA Reinsurance and Insurance Arbitration Society of the UK (ARIAS), c/o The International Underwriting Association, 3 Minster Court, London EC3R 7DD. The three arbitrators shall decide

by a majority, but if no majority can be reached, the verdict of the third arbitrator shall prevail. The third arbitrator shall also act as the Chairman.

Unless the parties agree otherwise, the arbitration tribunal shall consist of persons with not less than ten years experience in international insurance business, having been engaged in such business or in advising on such business in a professional capacity.

The arbitrator(s) shall have power to set all procedural rules for the holding of the arbitration, and all costs of the arbitration shall be paid by the parties and in the manner as directed by the arbitrator(s). The award of the arbitrator(s) shall be given in writing, with reasons, and both parties hereby agree to be bound by the award given in accordance with the above provisions.

The seat of the arbitration shall be in the capital city of the country or state of the law applicable to the Policy, and the arbitrator(s) shall apply the law of that country or state as the law of this Policy.

This condition remains valid, should the Policy become void.

## **8.9 Contribution**

This insurance is not to be called upon in contribution and is only to pay any loss, damage or injury hereon if and so far as not recoverable under any other insurance policy.

## **8.10 Fraudulent Claims**

If a claim made by or on behalf of the Insured is in any respect fraudulent, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf in connection with a claim, such claim shall not be recoverable hereunder and all cover under this Policy shall be forfeited.

## **8.11 Premium Adjustment**

The Deposit Premium charged under this Policy is provisional and based upon the values of Works and Construction Plant and Equipment, Temporary Buildings and Caravans as indicated in the Schedule.

If at any time during the construction period the values, as defined in Special Condition 7.1 Full Insurance, are higher than those indicated in the Schedule (increased, if applicable, by the provisions of Memorandum 3.3.9 20% Escalation) the Insured shall declare the amount of such values to the Insurers, so that the premium hereon shall be appropriately adjusted.

At the termination of the Construction Period the Insured shall declare the amount of the final Total Contract Price to the Insurers, plus (if applicable) the final value

of the materials, services and labour supplied by the Employer, and shall supply any other information that the Insurers may reasonably require, and the premium hereon shall be adjusted accordingly.

#### **8.12 Policy Voidable**

This Policy shall be voidable in the event of any misrepresentation, mis-description or non-disclosure in any material particular.

#### **8.13 Applicable Law**

The construction validity and performance of this insurance shall be in all respects governed by and interpreted in accordance with the laws of the jurisdiction specified in the Schedule, and any disputes (other than those set down in General Conditions 8.3 and 8.8) will be submitted to the Courts of the said jurisdiction. However, if the Schedule does not refer to the applicable law, the Laws of England shall apply and the English Courts shall have jurisdiction over any disputes.