

Marine Cargo Open Policy- Buildings In Transit

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Introduction

We are committed to complying with the Fair Insurance Code as published by the Insurance Council of New Zealand.

This means **We** will:

- (a) provide insurance contracts which are understandable and show the legal rights and obligations of both **Us** and the policyholder;
- (b) explain the meaning of legal or technical words or phrases;
- (c) explain the special meanings of particular words or phrases as they apply in the **Policy**;
- (d) manage claims quickly, fairly and transparently
- (e) clearly explain the reason(s) why a claim has been declined;
- (f) provide policyholders with a written summary of **Our** complaints procedure as soon as disputes arise and advise them how to lodge a complaint and tell them about the Insurance and Financial Services Ombudsman Scheme.

Section 1: Coverage

Any reference to “the Underwriters” in the Institute Clauses shall be deemed to be reference to **Us**. Should such Clauses be revised during the period of this contract, and **We** have given at least 30 days notice in writing to the **Assured**, then the revised Institute Clauses shall apply to all risks attaching subsequent to the date of expiry of that notice.

1.1 Risks Covered

This insurance covers accidental loss of or damage to the subject matter insured and is subject to the following terms, conditions, warranties and exclusions.

1.2 Duration of cover

This insurance attaches:

- (a) from the commencement of lifting of the subject matter insured immediately prior to the commencement of transit, placing on to the road conveyance,
- (b) continues during the ordinary course of road transit,
- (c) terminates upon the subject matter insured being off loaded at the place of destination from the road conveyance on to the ground or on to temporary or permanent foundations, which shall include piles, packs, jacks and support structures of any kind.

Notwithstanding that the subject matter insured may consist of separate buildings which may be split or further divided into sections or units, cover will only incept as and when the loading of each separate building or part thereof commences and ceases upon unloading, as more specifically defined within these clauses or this **Policy**.

- (d) Duration of Cover Contingency Extension

Unless otherwise insured under any Contractors Contract Insurance or similar insurance policy, cover shall continue on the subject matter insured until the lowering operation from temporary piles and / or the conveying trailer onto permanent foundations by the Insured has been completed.

The period of cover from arrival at site until lowering onto permanent piles has been completed shall not exceed 21 days in total.

1.3 Excess

- (i) Transit
\$750.00 excess any one accident and/or occurrence.
- (ii) Duration of Cover Contingency Extension
Excess increasing to \$1,500 any one accident and/or occurrence.

Section 2: Exclusions

2.1 Absolute Asbestos Exclusion Clause 2004

It is hereby understood and agreed that this contract shall not apply to and does not cover any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of asbestos.

2.2 General Exclusions

In no case shall this insurance cover loss, damage or expense caused by or attributable to or in consequence of

- (a) willful misconduct of the **Assured**
- (b) racking, movement, scratching, denting, chipping, grazing and/ or cracking of the subject matter insured unless as a direct result of the carrying conveyance overturning or becoming involved in a collision.
- (c) the ordinary action of wind and/or rain and/or other climatic conditions.
- (d) inherent vice or nature of the subject matter insured.
- (e) loss damage or expense caused by insects or vermin or the growth of plant material or fungi including but not limited to moth, borer, spores or rats
- (f) consequential loss of any kind and/or delay
- (g) fraud, dishonesty and/or theft
- (h) war, invasion, action of foreign enemy, warlike, operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power.
- (i) confiscation, nationalisation, requisition, destruction by the order of government or a local authority.
- (j) the cost of any preparatory transit work, including cutting, bracing or tomming notwithstanding such loss, damage or expense manifests during transit.
- (k) latent or structural defect of the subject matter insured.
- (l) collapse or failure of temporary or permanent foundations which shall include piles, packs, jacks or support structures of any kind unless such collapse or failure occurs immediately on the placing down of the subject matter insured.
- (m) the failure of the **Assured** to comply with Road Code or other authority regulations relating to vehicle load limitations and height restrictions.
- (n) This insurance does not cover any loss or damage which at the time of the happening of such loss or damage is insured by or would, but for existence of this **Policy** be insured by any other existing policy or policies either in the name of the **Assured** or in the name of any other party.
- (o) Process Clause
No claims to attach hereto for damage to property hereby insured which may be sustained whilst the same is in use and/or being worked upon and directly resulting thereon.
- (p) This Insurance does not cover expenses and costs associated with the reconnection of electric power, gas, water, sanitation, telephone or other services.

2.3 Institute Cyber Attack Exclusion Clause

Subject only to Clause 1.2. below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 1.1. shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

2.4 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause (10/11/2003) CL 370

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

- (a) In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
- (b) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- (c) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- (d) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- (e) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes
- (f) any chemical, biological, bio-chemical, or electromagnetic weapon.

2.5 Sanctions Limitation and Exclusion Clause (amended to include Australia) JC2010/014 August 2010 (amended)

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of Australia, the European Union, United Kingdom or United States of America.

2.6 Terrorism Exclusion Clause

This contract excludes any loss, damage, liability or expense arising from:

- (a) terrorism; and or
- (b) Steps taken to prevent, suppress, control or reduce the consequences of any actual, attempted, anticipated, threatened, suspected or perceived terrorism.

For the purpose of this clause, "terrorism: means any act(s) of any person(s) or organisation(s) involving:

- (i) The causing, occasioning or threatening of harm of whatever nature and by whatever means;
- (ii) Putting the public or any section of the public in fear,

in circumstances in which it is reasonable to conclude that the purpose(s) of the person(s) or organisation(s) concerned are wholly or partly of a political, religious, ideological or similar nature.

However this exclusion will not apply to:

- (a) Any loss, damage, liability or expense arising from the operation, ownership, management or chartering of:
 - (i) Vessels, craft and units whilst afloat, under construction or repair, in dock or whilst in store ashore;
 - (ii) Seawalls, wharves, piers, jetties, docks, berths, pontoons and associated dockside equipment all whilst within the confines of the port, terminal, shipyard, harbour or marina.
- (b) Cargo in the ordinary course of transit per Termination of Transit Clause (Terrorism).

Section 3: Definitions

3.1 **Assured** means:

The assured(s) named in the **Schedule**

3.2 **Policy** means:

This document, the **Schedule** and any endorsements issued by **Us**.

3.3 **Schedule** means:

The current schedule issued by **Us**.

3.4 **We, Our, Us** means:

Ando Insurance Group Limited, 100% placed with Certain Underwriters at Lloyd's in accordance with Contract No. SGM170001121 via Agile Underwriting Services Pty. Ltd. (ABN: 48 607 908 243 AFSL 483374)

Section 4: Conditions of insurance

4.1 **Basis of Valuation (unless otherwise declared and agreed with the Assurer prior to transit)**

Assured's purchase price or market value of the Building, whichever is the lesser, including freight if insured and if incurred.

In the even of the subject matter insured consisting of separate buildings or buildings in part or in whole, the sum insured shall be apportioned to each item or part taking into consideration the area and the type of construction.

4.2 **Cancellation**

- (a) **You** may cancel this **Policy** at any time by giving notice to **Us**. **We** will refund to the **Assured** on a pro rata basis the amount of the unexpired premium already paid subject to any applicable minimum premium.
- (b) **We** may cancel this **Policy** after sending at least 30 days' notice to the **Assured**.
- (c) Notices of cancellation shall be in accordance with Condition 4.12 (Notices by Us) paragraph 5.13(b) and 5.13(c). **We** will refund on a pro rata basis the amount of any unexpired premium already paid.

4.3 **Cargo Termination of Transit Clause (Terrorism) 2004**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

- (a) Notwithstanding any provision to the contrary contained in this **Policy** or the Clauses referred to therein, it is agreed that in so far as this **Policy** covers loss of or damage to the subject-matter insured caused by any terrorist or any person acting from a political motive, such cover is conditional upon the subject-matter insured being in the ordinary course of transit and, in any event, **SHALL TERMINATE EITHER;**
 - (i) As per the transit clauses contained within the **Policy**,
OR
 - (ii) on delivery to the Consignee's or other final warehouse or place of storage at the destination named herein,
 - (iii) on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the **Assured** elect to use either for storage other than in the ordinary course of transit or for allocation or distribution,
OR
 - (iv) in respect of marine transits, on the expiry of 60 days after completion of discharge outside of the goods hereby insured from the oversea vessel at the final port of discharge,
 - (v) in respect of air transits, on the expiry of 30 days after unloading the subject-matter insured from the aircraft at the final place of discharge,

Whichever shall first occur

- (b) If this **Policy** or the Clauses referred to therein specifically provide cover for inland or other further transits following on from storage, cover will re-attach, and continues during the ordinary course of that transit terminating again in accordance with Clause 1.
- (c) This clause is subject to New Zealand law and practice.

4.4 Claims

(a) Average Clause

If at the time of the loss or damage, the subject matter insured has collectively a greater market value than the sum insured under this insurance then the **Assured** shall be considered as being their own insurer for the difference and shall bear a ratable share of the loss accordingly.

For the purpose of this clause the market value of the subject matter insured shall be deemed to mean the value of the subject matter insured whilst situated in a permanent position on a land site immediately prior to the commencement of transit and shall take into consideration and account the occupancy and use of the subject matter insured prior to commencement of transit. Market value shall be assessed and expressed in writing by an independent and fully qualified member of the New Zealand Institute of Valuers.

- (b) No claim for constructive total Loss shall be recoverable unless the subject matter insured is reasonably abandoned either on account of its actual total loss being unavoidable or as a result of the cost or repairing, recovering, reconditioning and forwarding the subject matter insured to the destination exceeding the sum insured on arrival.
- (c) In the event of loss, damage or expense recoverable under this insurance this insurance will pay (subject to 6.1)
 - 1. in the event of partial loss the cost of repairs less the cost of making good damage or deterioration caused by the racking, movement or bracing of the property during the period of cover that would have been incurred in the normal course of transit.
 - 2. in the even of total or constructive total loss the proportionate sum insured value of any unit or portion of the subject matter insured, but in no case shall this exceed the value specified under 5 above.

4.5 Claims Instruction Procedure

In the event of loss or damage for which **We** may be liable immediate notice must be given to **Us** or the party **We** nominate.

It is the Duty of the **Assured** and their Agents, in all cases, to take such measures as may be reasonable for the purposes of averting or minimising a loss and to ensure that all the rights against Carriers, Bailees or other third parties are properly preserved and exercised. In particular, the **Assured** or their Agents are required: -

- (a) To claim immediately for survey by Carriers, the port Authorities or other Bailees for any missing packages.
- (b) To apply immediately for survey by Carriers' or other Bailees' representatives if any loss or damage be apparent and claim on the Carriers or other Bailees for any actual loss or damage found at survey.
- (c) In no circumstances, except under written protest, to give clean receipts where goods are in doubtful condition.
- (d) To give notice in writing to the Carriers or other Bailees within three days of delivery if the loss or damage was not apparent at the time of taking delivery.
- (e) When delivery is made by Container, to ensure that the Container and its seals are examined immediately by a responsible official. If the Container is delivered damaged or with seals broken or missing or with seals other than stated in the shipping documents, to clause the delivery receipt accordingly and retain all defective or irregular seals for subsequent identification.

The consignees or their Agents are recommended to make themselves familiar with regulations of the Port Authorities at the port of discharge.

Any claim under this insurance should be submitted without delay, accompanied by all correspondence with Carriers and other parties regarding their liability.

4.6 Clause Paramount

Notwithstanding anything contained herein to the contrary, the Marine Insurance Act 1908 and amendments shall take precedence.

4.7 Conditions

In the event of the subject matter insured being prepared and/or carried in transit in separate units or portions the cover shall apply separately to each unit or portion and the sum insured shall be apportioned to each unit or portion accordingly.

Cover under these clauses extends to indemnify both the **Assured** and/or the Owner of the property for their respective rights and interests.

4.8 Debris Removal, Building Fees, Authorities Requirements

- (a) This insurance will pay for costs of disposal, removal or destruction of the subject matter insured in consequence of a claim recoverable under the terms of this insurance but not exceeding \$10,000 in all.
- (b) In the event of an accepted claim, and with **Our** prior approval, this insurance will reimburse architects, surveyors and/or building consultants fees reasonably incurred for the purpose of facilitating repair and/or reconstruction of loss or damage.
- (c) in the event of an accepted claim, and with **Our** prior approval, this insurance will reimburse costs and expenses necessarily incurred as a result of the requirement of any building or other regulation which must be complied with by the authority of any Act of Parliament and/or regulation and/or by-law of any Municipal, Public or Local Authority.

This reimbursement of cover shall only apply to costs and expenses directly related in consequence of claim repair work or renovation provided that the amount payable will not include costs which would have been payable had the loss or damage not occurred or which had already or would have been required of the **Assured** prior to the happening of the loss or damage.

Costs and expenses detailed in clauses 8.2 and 8.3 shall not exceed 10% of the agreed **Policy** sum insured.

Costs and expenses detailed in clauses 8.1, 8.2 and 8.3 do not extend to cover any liability, cost or expense arising in respect of pollution, contamination or pollution clean up costs, fines or penalties.

4.9 Declarations

To be made in writing to Ando Insurance Group (NZ) Limited.

4.10 Jurisdiction Clause

This **Policy** of Insurance and any dispute hereunder shall be subject to the jurisdiction of the appropriate Court of New Zealand.

4.11 Minimising Losses

It is the duty of the **Assured** and their servants and agents in respect of any loss to take such measures as may be reasonable for the purpose of averting or minimising such loss and to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised **We** will, in addition to any recoverable loss, reimburse the **Assured** for any charges properly and reasonably incurred in pursuance of these duties.

Measures taken by the **Assured** or **Us** with the object of saving, protecting or recovering the subject matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

4.12 Notices by Us

- (a) Any notice given in writing by **Us** to the **Assured**, or to the broker through which the **Assured** arranged this **Policy** with **Us**, will be deemed to be notice to each Insured.
- (b) Any notices by **Us** may be effected by sending an email or letter to the last known contact address.
- (c) Any such notice will be deemed to have been received, if sent by email, at the time of transmission, and if sent by post, three business days after the date of posting.

4.13 Notification of Loss/Damage

In the event of loss or damage that may give rise to a claim, immediate notification is to be given to the

nearest Ando office. Failure to do so in a reasonable time may prejudice a claim. All correspondence with Carriers or Bailees shall also be provided to **Us**.

4.14 Other Insurance

Upon giving notice of any claim, the **Assured** will provide **Us** with written details of any other insurance that may cover or partially cover that claim.

In the event that the **Assured** holds other insurance cover with another insurer in respect of any claim then the indemnity under this **Policy** shall not be available until the **Limit of Indemnity** under any other **Policy** has been exhausted.

4.15 Standard Marine Open Policy Conditions

- (a) This contract insures the subject matter specified for the transits and on the conditions named shipped by or for account of the **Assured** or the insurance of which is under their control as selling or purchasing agent unless insured elsewhere prior to inception of this contract or to insurable interest being acquired. This contract does not cover the interest of any other persons, but this shall not prevent a transfer of the insurance by the **Assured** or Assignee.
- (b) It is a condition of this contract that the **Assured** are bound to declare every consignment without exception, **We** are bound to accept up to but not exceeding the amount specified in Clause 3 below.
- (c) This contract is for an open amount but the amount declarable may not exceed the **Policy** limits as provided in this **Policy** document in respect of any one vessel, aircraft or conveyance.
- (d) Notwithstanding anything to the contrary contained in this contract **Our** liability in respect of any one accident or series of accidents arising from the same event in one location shall not exceed any of the maximum amounts specified in this **Policy** document.
- (e) In the event of loss, accident or arrival before declaration of value it is agreed that the basis of valuation shall be the prime cost of the goods or merchandise plus the expenses of and incidental to shipping, the freight for which the **Assured** are liable, the charges of insurance and a percentage as provided in the Basis of Valuation.

4.16 Warranties

Note: A warranty is a pre-contracted promise by the **Assured**, the breach of which discharges **Us** from all liability at the time of that breach.

It is warranted the subject matter insured is structurally sound to withstand the normal stress of transit, loading and unloading.

It is warranted that the subject matter insured is load locked to the road carrying conveyance where such devices are standard equipment fitted to the road conveyance. If not fitted then the subject matter insured is to be secured in accordance with sound industry practice to ensure the transit can be completed in a safe and diligent manner.

4.17 Words

Certain words in this **Policy** have a specific meaning. These words appear in **bold** and **You** will find the meaning listed in Section 3 'Definitions' of this **Policy**. Words importing persons will include companies and other legal entities. The singular includes reference to the plural and vice versa, and reference to any gender includes all other genders.

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