

PUBLIC LIABILITY INSURANCE POLICY

Please read this Policy carefully and ensure that it meets your requirements.

This Policy, the Schedule and any memoranda thereon or endorsement thereto shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or Schedule shall bear such specific meaning wherever it may appear.

THE INSURED AND THE COMPANY AGREE

- (a) The Proposal shall be incorporated into and form the basis of the contract.
- (b) The Insured will pay the Premium specified in the Schedule.
- (c) The Company will provide insurance subject to the limits, terms, conditions and exclusions of this Policy in respect of any insured event occurring during the Period of Insurance.
- (d) The due observance and fulfilment of the terms, conditions and endorsements of this Policy relating to anything to be done or not to be done or to be complied with by the Insured; and the truth of the contents and statements in the Proposal, shall be conditions precedent to any liability of the Company under this Policy.

INSURING CLAUSES

THE COMPANY WILL indemnify the Insured against legal liability for damages in respect of

- (1) accidental Injury to third parties
- (2) accidental Damage to tangible property belonging to third parties

occurring within the Geographical Limit during the Period of Insurance in connection with the Business of the Insured.

In respect of a claim for damages to which the indemnity expressed in this Policy applies, **THE COMPANY WILL ALSO** indemnify the Insured against:

- (a) all costs and expenses of litigation recovered by any claimant from the Insured,
- (b) all costs and expenses of litigation reasonably incurred with the written consent of the Company.

DEFINITIONS

For the purposes of this Policy:

1. "The Company" means China Merchants Insurance Company Limited
2. "Damage" means physical loss or damage, including resultant loss of use of the property physically lost or damaged. All such loss of use shall be deemed to occur at the time of the loss or damage giving rise thereto.
3. "Event" means one occurrence or all occurrences of a series consequent on or attributable to one source or original cause.
4. "Excess" means the amount which shall be payable by the Insured before the Company shall be liable to make any payment in respect of any claim(s) otherwise indemnifiable under this Policy.
5. "Financial Loss" means any pecuniary loss, cost or expense unaccompanied by Injury or Damage.
6. "Geographical Limit" means the territorial limits of Hong Kong.
7. "Hong Kong" means the Hong Kong Special Administrative Region.
8. "Injury" means bodily injury, disease or illness including death resulting therefrom.
9. "Pollutant" means any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise including but is not limited to asbestos, smoke, vapour, soot, fume, fibre, mould, spore, fungus, germ, bacteria, virus, acids, alkalis, chemicals, nuclear or radioactive material of any sort, sewage and waste. Waste includes but is not limited to material to be recycled, reconditioned or reclaimed.
10. "Products" means all commodities, goods or products manufactured, sold, repaired, serviced, tested, processed or supplied (including those supplied as part of any service, rendered or contract work executed) by the Insured including any containers, packaging and instructions supplied therewith.
11. "The Proposal" means any signed proposal form and declaration and any information supplied by or on behalf of the Insured in addition thereto or in substitution therefor.

Unless the context otherwise requires, words and expressions importing the masculine gender also include the feminine and neuter genders and words and expressions in the singular include the plural and words and expressions in the plural include the singular.

POLICY LIMIT OF INDEMNITY

The limit of the Company's liability for damages (including interest) and claimant's costs and expenses in respect of or arising out of any one Event in any one Period of Insurance shall not exceed the Limit of Indemnity as specified in the Schedule irrespective of the number of parties entitled to indemnity under this Policy.

The Company will also pay within the Limit of Indemnity all other costs and expenses of litigation incurred with its written consent.

JURISDICTION CLAUSE

The Company shall not be liable under this Policy in respect of judgments against the Insured which are not in the first instance delivered by or obtained from a court of competent jurisdiction of Hong Kong.

EXCEPTIONS

The Company shall not be liable under this Policy in respect of:

1. the amount of any Excess stated in the Schedule or elsewhere in this Policy which shall apply separately to each and every claim or series of claims consequent on or attributable to one source or original cause.
2. Injury or Damage caused by, arising out of or in connection with the ownership possession or use by or on behalf of the Insured or any person entitled to indemnity of any
 - (a) mechanically propelled vehicle and trailer attached thereto other than legal liability arising out of the loading or unloading of any vehicle except where indemnity is provided by any motor insurance policy or by any other more specific insurance.
 - (b) locomotives, vessel, craft or device designed made or intended to float on or in or to travel through water air or space.
 - (c) lift, elevator, escalator, hoist, crane or other lifting machinery not specified in the Schedule.
 - (d) berth, docks, quays or wharves.
 - (e) boilers and pressure vessels operated under steam pressure only.
3. any liability required to be covered by a policy of insurance under section 6(1)(b) of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).
4. any claim arising under the Employees' Compensation Ordinance (Cap. 282).
5. any claim arising out of liability assumed by the Insured under agreement unless such liability would have attached in the absence of such agreement.
6. damage to
 - (a) any structure or land due or alleged to be due to vibration or to the withdrawal or weakening of or interference with the support.
 - (b) property owned, leased, rented or occupied by the Insured.
 - (c) property held in trust by or in the custody or control of the Insured.
 - (d) that part of any property worked upon by the Insured or any person acting on behalf of the Insured which arises out of such work.
7. Injury or Damage caused by, resulting from or in connection with remedial or professional or other advice, service or treatment (other than medical first aid treatment) given, exercised, administered, prepared, rendered or agreed by the Insured or by any person acting on behalf of the Insured and any neglect, error or omission connected therewith.
8. Injury or Damage caused by:-
 - (a) contractor(s) of the Insured;
 - (b) subcontractor(s) of the aforesaid contractor(s); or
 - (c) persons engaged in or upon the service of such contractor(s) or subcontractor(s).
9. Injury or Damage directly or indirectly caused by or arising out of Pollutants.
10. any claim, damages, cost and expense arising out of any direction or request whether governmental or otherwise that the Insured evaluate, test for, monitor, clean up, remove, control, contain, treat, detoxify or neutralise Pollutants.
11. any claim arising out of the nature or conditions of any Products.
12.
 - (a) fine or penalty.
 - (b) punitive or exemplary damages awarded by any court and any costs or interests associated with any such award.
13. any loss, damage, cost and expense including consequential loss of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
 - (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, riot, strike, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power.
 - (b) any terrorist act including but not limited to
 - the use or threat of force violence and/or
 - harm or damage to life or to property (or the threat of such harm or damage) including but not limited to nuclear radiation and/or contamination by chemical and/or biological agentsby any person(s) or group(s) of persons committed for political, religious, ideological or similar purpose express or otherwise and/or to put the public or any section of the public in fear.
 - (c) any action taken in controlling, preventing, suppressing or in any way relating to (i) or (ii) above.
 - (d) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
 - (e) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
 - (f) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
 - (g) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter.
 - (h) any chemical, biological, bio-chemical or electromagnetic weapon.

If the Company alleges that, by reason of this exception, any loss, damage, cost or expenses is not covered by this Policy, the burden of proving the contrary shall be upon the Insured.

14. any claim of whatsoever nature directly or indirectly caused by or contributed to by or arising from the Human Immune Deficiency Virus (HIV), the Acquired Immune Deficiency Syndrome Related Complex (ARC), the Acquired Immune Deficiency Syndrome (AIDS), any HIV, ARC or AIDS related virus complex or syndrome.
15. all claims and losses based upon arising out of directly or indirectly resulting from or in consequence of or any way involving:
 - (a) asbestos or
 - (b) any actual or alleged asbestos related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure or potential exposure to asbestos.
16. any Financial Loss.

CLAIMS SETTLEMENT CONDITIONS

1. **Reporting and Notice.** In the event of any occurrence which may give rise to a claim under this Policy (regardless of any Excess) the Insured shall immediately give notice thereof in writing to the Company with full particulars.

The Insured shall also give the Company notice in writing immediately the Insured becomes aware of any intention to prosecute the Insured any impending prosecution inquest or fatal inquiry in connection with any occurrence which may give rise to a claim under this Policy. Every letter, claim, writ, summons and process shall be forwarded to the Company immediately on receipt.

2. **Conduct of Claim.** No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. The Insured shall give all such assistance as the Company may require.
3. **Company's Rights.** The Insured shall pay on demand the amount of Excess to the Company prior to settlement of any claim.
4. **Company's Option.** In connection with any claim or series of claims made against the Insured consequent on or attributable to one source or original cause the Company may at any time after the deduction of any Excess pay to the Insured the Limit of Indemnity (after deduction of any sums already paid as damages, claimant's costs and expenses) or any lesser amount for which such claims can be settled and thereupon the Company shall relinquish the control of such claims and be under no further liability in connection therewith except for additional costs and expenses for which the Company may be responsible under this Policy in respect of matters prior to the date of such payment.
5. **Other Insurance.** If at the time of any claim under the Policy the Insured is or would but for the existence of this Policy be entitled to indemnity under any other policy or policies, the Company shall not be liable except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this Policy not been effected.
6. **Waiver of Claims.** The Insured shall not become a party to any agreement the effect of which is that the Insured waives any claim which the Insured would otherwise have against any person in respect of or arising out of any occurrence resulting in liability on the part of the Insured for which indemnity is provided by this Policy or whereby any such claim is limited or qualified in any way.
7. **Subrogation.** The Company shall be entitled at its sole discretion to prosecute in the name of the Insured any claim for damages costs

indemnity contribution or otherwise against any person who may be liable to the Insured in respect of any liability on the part of the Insured for which indemnity is provided by this Policy and shall have full discretion in the conduct of any such proceedings and in the settlement of any such claim. The Insured shall give all such information and assistance as the Company may from time to time require and execute any necessary documents for the purpose of vesting such rights in the Company. Any moneys recovered pursuant to the exercise of such rights shall be applied firstly for the benefit of the Company to the extent of the amount paid by the Company in respect of any claim including any costs and expenses paid or incurred by the Company and costs and expenses incurred in prosecuting such recovery action.

GENERAL CONDITIONS

1. **Notices.** Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company and in the case of notice or communication to the Insured to his address specified in the Schedule.
2. **Precautions.** The Insured shall take reasonable precautions to prevent Injury and Damage and to comply with all obligations and regulations set out in any legislation applicable or imposed by any authority and to maintain all buildings furnishings ways and works machinery and plant in sound condition. The Insured at his own expense shall cause any defect or danger to be made good or remedied as soon as possible after discovery and in the meantime shall cause such additional precautions to be taken as the circumstances may require.
3. **Change in Risks.** The Company shall not be liable if after this Policy has been effected the risk be increased from any cause whatsoever unless the Company has signified its assent thereto in writing.
4. **Right of Inspection.** The Company shall have the right and opportunity at all reasonable times to inspect the premises works machinery plant and appliances used in the Business.
5. **Assignment.** No assignment of interest under this Policy shall bind the Company unless the written consent of the Company is first obtained and endorsed hereon.
6. **Cancellation.** This Policy may be terminated at any time at the request of the Insured, in which case the Company will retain the customary short period rate for the time the Policy has been in force. This Policy may also at any time be terminated at the option of the Company in which case the Company shall give seven days' written notice to the Insured to that effect and be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation.
7. **Premium Adjustment.** If any part of the Premium or Renewal Premium is based on estimates furnished by the Insured the Insured shall keep an accurate record containing all relative particulars and shall allow the Company to inspect such record. The Insured shall within one month from the expiry of each Period of Insurance furnish such information as the Company may require. The Premium or Renewal Premium shall thereupon be adjusted and the difference paid by or allowed to the Insured.
8. **Arbitration.** All differences arising out of this Policy shall be determined by arbitration in accordance with the Arbitration Ordinance as amended from time to time. If the parties fail to agree upon the choice of the arbitrators, then the choice shall be referred to the Chairman for the time being of the Hong Kong International Arbitration Centre. It is hereby expressly stipulated that it shall be a condition precedent to any right of action or suit upon this Policy that an arbitration award shall be first obtained. If the Company shall disclaim liability to the Insured for any claim hereunder and

such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

9. **Governing Law.** This Policy is subject to the exclusive jurisdiction of Hong Kong and is to be construed according to the laws of Hong Kong.

10. **Rights of Contract Third Parties.** Any person or entity who is not a party to this Policy shall have no rights under the Contracts (Rights to Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) to enforce any terms of this Policy.

CLAUSES AND/OR WARRANTY

The following Clauses and/or Warranty will not have effect unless specially indicated in the Schedule of the Policy or by Endorsement subsequently attached hereto:

L008A DATE RELATED PERFORMANCE AND FUNCTIONALITY CLAUSE

This policy does not cover DAMAGE and/or CONSEQUENTIAL LOSS directly or indirectly caused by or consisting of arising from the failure or inability of any computer, data processing equipment or media, microchip, embedded chip, integrated circuit or similar device or any computer software, whether the property of the insured or not, and whether occurring before, during or after the year 2000

1. correctly to recognize any date as its true calendar date
2. to capture save or retain, and/or correctly to manipulate, interpret or process any data or information or command or instruction as a result of treating any date
3. to capture save retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture save retain or correctly to process such data on or after any date.

however this exclusion shall not apply to any claim for subsequent loss destruction or damage to any property or consequential loss which itself results from a Defined Perils but only to the extent that such claim would otherwise be insured under this Policy.

For the purpose of this Clause, Defined Perils shall mean fire, lightning, explosion, aircraft or other aerial devices or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons, theft or attempted theft, earthquake, subterranean fire, storm, tempest, flood, escape of water from any tank apparatus or pipe, impact by any vehicle or vessel or by goods falling therefrom or animal.

L015A I.T. CLARIFICATION CLAUSE

It is hereby noted and agreed that property damage covered under this insurance shall mean physical damage to the substance of property.

Physical damage to the substance of property shall not include damage to data or software, in particular any detrimental change in data, software or computer programs that is caused by a deletion, a corruption or a deformation of the original structure.

Consequently the following are excluded from this Insurance:

- a. Loss of or damage to data or software, in particular any detrimental change in data, software or computer programs that is caused by a deletion, a corruption or a deformation of the original structure, and any business interruption losses resulting from such loss or damage.

Notwithstanding this exclusion, loss of or damage to data or software which is the direct consequence of insured physical damage to the substance of property shall be covered.

- b. Loss or damage resulting from an impairment in the function, availability, range of use or accessibility of data, software or computer programs, and any business interruption losses resulting from such loss or damage.

L027A TERRORISM EXCLUSION CLAUSE FOR CONTAMINATION AND EXPLOSIVES ENDORSEMENT

It is agreed that, regardless of any contributory causes, this insurance does not cover any loss, damage, cost or expense directly or indirectly arising out of

- a) biological or chemical contamination
- b) Missiles, bombs, grenades, explosives
- c) Chemical or biological substances which are not used for peaceful means

due to any act of terrorism.

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

For the purpose of a) "contamination" means the contamination, poisoning, or prevention and/or limitation of the use of objects due to the effects of chemical and/or biological substances.

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

L028A TERRORISM EXCLUSION ENDORSEMENT

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

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

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

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

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



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