

## CONDITIONS

LSW1193A (10/06)

The conditions as set out below apply to all of the perils insured by this policy either as STATUTORY CONDITIONS or as contractual conditions as the law may require.

### STATUTORY CONDITIONS/CONDITIONS

#### **Misrepresentation**

1. If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material; to be made known to the insurer in order to enable it to judge of the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

#### **Property of Others**

2. Unless otherwise specifically stated in the contract, the insurer is not liable for loss or damage to property owned by any person other than the insured, unless the interest of the insured therein is stated in the contract.

#### **Change of Interest**

3. The insurer is liable for loss or damage occurring after an authorized assignment under the Bankruptcy Act (Canada) or change of title by succession, by operation of law, or by death.

#### **Material Change**

4. Any change material to the risk and within the control and knowledge of the insured avoids the contract as to the part affected thereby, unless the change is promptly notified in writing to the insurer or its local agent, and the insurer when so notified may return the unearned portion, if any, of the premium paid and cancel the contract, or may notify the insured in writing that, if the insured desires the contract to continue in force, the insured must, within fifteen days of the receipt of the notice, pay to the insurer an additional premium, and in default of such payment the contract is no longer in force and the insurer shall return the unearned portion, if any, of the premium paid.

#### **Termination**

5. 1. This contract may be terminated,
  - (a) by the insurer giving to the insured fifteen days' notice of termination by registered mail or five days' written notice of termination personally delivered;
  - (b) by the insured at any time on request.
2. Where this contract is terminated by the insurer,
  - (a) the insurer shall refund the excess of premium actually paid by the insured over the pro rata premium for the expired time, but, in no event, shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and
  - (b) the refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.
3. Where this contract is terminated by the insured, the insurer shall refund as soon as practicable the excess of the premium actually paid by the insured over the short rate premium for the expired time, but in no event shall the short rate premium for the expired time be deemed to be less than any minimum retained premium specified.
4. The refund may be made by money, postal or express company money order or cheque payable at par.
5. The fifteen days mentioned in clause 1(a) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

#### **Requirements After Loss**

6. 1. Upon the occurrence of any loss of or damage to the insured property, the insured shall, if the loss or damage is covered by the contract, in addition to observing the requirements of conditions 9, 10 and 11,
  - (a) forthwith give notice thereof in writing to the insurer;

- (b) deliver as soon as practicable to the insurer a proof of loss verified by a statutory declaration,
  - (i) giving a complete inventory of the destroyed and damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
  - (ii) stating when and how the loss occurred, and if caused by fire or explosion due to ignition, how the fire or explosion originated, so far as the insured knows or believes,
  - (iii) stating that the loss did not occur through any willful act or neglect or the procurement; means or connivance of the insured,
  - (iv) showing the amount of other insurances and the names of other insurers,
  - (v) showing the interest of the insured and of all others in the property with particulars of all liens, encumbrances and other charges upon the property,
  - (vi) showing any changes in title, use, occupation, location, possession or exposures of the property since the issue of the contract,
  - (vii) showing the place where the property insured was at the time of loss;
- (c) if required, give a complete inventory of undamaged property and showing in detail quantities, cost, and actual cash value;
- (d) if required and if practicable, produce books of account, warehouse receipts and stock lists, and furnish invoices and other vouchers verified by statutory declaration, and furnish a copy of the written portion of any other contract.

- 2. The evidence furnished under clauses 1(c) and (d) of this condition shall not be considered proofs of loss within the meaning of conditions 12 and 13.

### **Fraud**

- 7. Any fraud or willfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration.

### **Who May Give Notice and Proof**

- 8. Notice of loss may be given and proof of loss may be made by the agent of the insured named in the contract in case of absence or inability of the insured to give the notice or make the proof, and absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable.

### **Salvage**

- 9. 1. The insured, in the event of any loss or damage to any property insured under the contract, shall take all reasonable steps to prevent further damage to such property so damaged and to prevent damage to other property insured hereunder including, if necessary, its removal to prevent damage or further damage thereto.
- 2. The insurer shall contribute *pro rata* towards any reasonable and proper expenses in connection with steps taken by the insured and required under subparagraph (1) of this condition according to the respective interests of the parties.

### **Entry, Control, Abandonment**

- 10. After loss or damage to insured property, the insurer has an immediate right of access and entry by accredited agents sufficient to enable them to survey and examine the property, and to make an estimate of the loss or damage, and, after the insured has secured the property, a further right of access and entry sufficient to enable them to make appraisal or particular estimate of the loss or damage, but the insurer is not entitled to the control or possession of the insured property, and without the consent of the insurer there can be no abandonment to it of insured property.

### **Appraisal**

- 11. In the event of disagreement as to the value of the property insured, the property saved or the amount of the loss, those questions shall be determined by appraisal as provided under the Insurance Act before there can be any recovery under this contract whether the right to recover on the contract is disputed or not, and independently of all other questions. There shall be no right to an appraisal until a specific demand therefore is made in writing and until after proof of loss has been delivered.

## **When Loss Payable**

12. The loss is payable within sixty days after completion of the proof of loss, unless the contract provides for a shorter period.

## **Replacement**

- 13.1. The insurer, instead of making payment, may repair, rebuild, or replace the property damaged or lost, giving written notice of its intention to do so within thirty days after receipt of the proofs of loss.
2. In that event the insurer shall commence to so repair, rebuild, or replace the property within forty-five days after receipt of the proofs of loss, and shall thereafter proceed with all due diligence to the completion thereof.

## **Action**

14. Every action or proceeding against the insurer for the recovery of a claim under or by virtue of this contract is absolutely barred unless commenced within one year\* next after the loss or damage occurs.

Two years in the Province of Manitoba and the Northwest and Yukon Territories.

Saskatchewan Statutory Condition 14 is repealed. See The Limitations Act, S.S. 2004, c.L-16.1.

## **Notice**

Any written notice to the insurer may be delivered at, or sent by registered mail to, the chief agency or head office of the insurer in the Province. Written notice may be given to the insured named in the contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression "registered" means registered in or outside Canada.

## **ADDITIONAL CONDITIONS**

### **Notice to Authorities**

1. Where the loss is due to malicious acts, burglary, robbery, theft, or attempt thereof, or is suspected to be so due, the Insured shall give immediate notice thereof to the police or other authorities having jurisdiction.

### **No Benefit to Bailee**

2. It is warranted by the Insured that this insurance shall in no way insure directly or indirectly to the benefit of any carrier or other bailee.

### **Pair and Set**

3. In the case of loss of or damage to any article or articles, whether scheduled or unscheduled which are a part of a set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the set, but in no event shall such loss or damage be construed to mean total loss of set.

### **Parts**

4. In the case of loss of or damage to any part of the insured property whether scheduled or unscheduled, consisting, when complete for use, of several parts, the Insurer is not liable for more than the insured value of the part lost or damaged, including the cost of installation.

### **Sue and Labour**

5. It is the duty of the insured in the event that any property insured hereunder is lost to take all reasonable steps in and about the recovery of such property. The Insurer shall contribute pro rata towards any reasonable and proper expenses in connection with the foregoing according to the respective interests of the parties.

### **Basis of Settlement**

6. Unless otherwise provided, the Insurer is not liable beyond the actual cash value of the property at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.

### **Subrogation**

7. The insurer, upon making any payment or assuming liability therefore under this Policy, shall be subrogated to all rights of recovery of the Insured against any person, and may bring action in the name of the Insured to enforce such rights. Where the net amount recovered after deducting the costs of recovery is not sufficient to provide a complete indemnity for the loss or damage suffered, that amount shall be divided between the Insurer and the Insured in the proportions in which the loss or damage has been borne by them respectively.

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