

T3L Terrorism Liability Insuring Agreement

This is a claims made policy which applies only to claims first made against the Insured during the Policy Period. This policy is not subject to the terms and conditions of any other insurance. It should be read carefully by the Insured.

The Declarations Page and Application for this insurance are attached to and form part of this Policy.

Coverage

In consideration of the payment of the premium set out in the Declarations Page, Underwriters agree subject to the insuring agreements, conditions, exclusions, definitions and declarations contained in this policy, to indemnify the Insured in respect of their operations, for their Ultimate Net Loss by reason of the liability imposed upon the insured by law for monetary damages in respect of:

- a. claims first made against the Insured during the policy period set out in the Declarations Page; or
- b. claims or circumstances likely to give rise to a claim insured hereunder that are reported in writing to Underwriters within 90 days after the expiry of this policy

provided always that such claims arise out of an Occurrence as defined herein that takes place during the policy period, for Bodily Injury and/or Property Damage **resulting solely and directly from an act or acts of Terrorism as defined herein.**

Limits of Liability

Underwriters shall only be liable for Ultimate Net Loss, as set out the Declarations Page, any one occurrence and in the aggregate in excess of the underlying amount and/or the each occurrence retention set out in the Declarations Page.

Regardless of the number of occurrences or claims made against the Insured or multiple Insureds, Underwriters' total limits of liability shall not exceed the amount of Ultimate Net Loss in the aggregate as set forth in the Declarations Page. Such limits include defense expenses.

Underlying Amount/Each Occurrence Retention

Only that part of any payment constituting Ultimate Net Loss shall deplete the underlying amount and/or the each occurrence retention set out in the Declarations Page. Regardless of the number of claims made against the Insured, where the underlying amount is in respect of each occurrence, the Insured shall always be liable for either the underlying amount or the each occurrence retention, whichever is the greater, in respect of each and every occurrence.

Regardless of the number of claims made against the Insured, where the underlying amount is in the aggregate, the Insured shall always be liable for the remaining underlying amount and/or the each occurrence retention.

The each occurrence retention shall be subject to no aggregate limitation regardless of the number of occurrences or Claims made against the Insured.

Exclusions

This policy does not apply to any actual or alleged liability for:

1. Loss, injury or damage arising directly or indirectly from nuclear detonation, reaction, nuclear radiation or radioactive contamination, however such nuclear detonation, reaction, nuclear radiation or radioactive contamination may have been caused.
2. Loss, injury or damage occasioned directly or indirectly by war, invasion or warlike operations (whether war be declared or not), hostile acts of sovereign or government entities, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or martial law or confiscation by order of any Government or public authority.
3. Loss by seizure or illegal occupation unless caused directly by an act of terrorism.
4. Loss, injury or damage caused by confiscation, requisition, detention, legal occupation, embargo, quarantine, or any result of any order of public or government authority which deprives the Insured of the use or value of its property, nor for loss or damage arising from acts of contraband or illegal transportation or illegal trade.
5. Loss, injury or damage directly or indirectly arising from or in consequence of the discharge of pollutants or contaminants, which pollutants and contaminants shall include but not be limited to any solid, liquid, gaseous or thermal irritant, contaminant of toxic or hazardous substance or any substance the presence, existence or release of which endangers or threatens to endanger the health, safety or welfare of persons or the environment or loss, injury or damage directly or indirectly arising from chemical or biological release or exposure of any kind,

However, notwithstanding the above and subject to all other terms, conditions and exclusions of this policy, coverage shall be given for damages on account of Bodily Injury and/or Property Damage, and for the costs of cleaning up pollutants or contaminants, arising out of an occurrence as defined herein in respect of a discharge of pollutants or contaminants immediately, solely and directly caused by an act of Terrorism, and only where the pollutants or contaminants were present at the location of an act of Terrorism prior to such act.

6. Loss, injury or damage by attacks by electronic means including computer hacking or the introduction of any form of computer virus.
7. Loss, injury or damage caused by vandals or other persons acting maliciously or by way of protest or strikes, riots or civil commotion unless caused directly by an act of Terrorism.
8. Loss, injury or damage resulting from delay or loss of markets, failure to supply goods or services, or failure to perform however caused or arising, and despite any preceding loss insured hereunder.
9. Loss or damage caused by cessation, fluctuation or variation in, or insufficiency of, water, gas or electricity supplies, telecommunications or service of any type.
10. Loss or increased cost as a result of threat or hoax, in the absence of physical damage due to an act of terrorism.
11. Bodily Injury to employees or contract workers of the Assured or arising under any workers' compensation, unemployment compensation or disability laws, statutes, or regulations;

12. Bodily Injury or Property Damage arising out of discrimination or humiliation;
13. Loss or damage to property
 - a. owned, leased, rented or occupied by the Insured;
 - b. in the care, custody or control of the Insured;
14. For fines, penalties, punitive damages, exemplary damages, or any additional damages resulting from the multiplication of compensatory damages;
15. Mental injury, anguish or shock where no bodily injury has occurred to the claimant;
16. For Bodily Injury and/or Property Damage directly or indirectly relating to the actual, alleged or threatened presence of asbestos in any form;
17. For any claims or circumstances disclosed on the Application for this insurance.

Nothing contained in the above exclusions shall extend this policy to cover any liability which would not have been covered had these exclusions not been incorporated herein.

Definitions

This policy is subject to the following definitions:-

1. Terrorism

For the purpose of this Insurance, an act of terrorism means an act, including the use of force or violence, of any person or group(s) of persons, whether action alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including the intention to influence any government and/or to put the public in fear for such purposes.

2. Bodily Injury

The words "Bodily Injury", wherever used in this policy, shall mean all physical injury to a third party human being including death, sickness, disease or disability and all mental injury, anguish or shock to such human being resulting from such physical injury,

3. Claim

The word "claim", wherever used in this policy, shall mean that part of each written demand received by the Insured for monetary damages covered by this policy, including the service of suit or institution of arbitration proceedings. The term "claim" shall not include a demand for an injunction or any other non-monetary relief.

4. Defense Expenses

The words "defense expenses", wherever used in this policy, shall mean investigation, adjustment, appraisal, defense and appeal costs and expenses and pre and post judgement interest, paid or incurred by or on behalf of the Insured.

The salaries, expenses or administrative costs of the Insured or its employees or any insurer shall not be included within the meaning of defense expenses.

5. Property Damage

The words “property damage”, wherever used in this policy, shall mean physical loss of, physical damage to or physical destruction of tangible property of a third party, including loss of use of the tangible property so lost, damaged or destroyed and/or removal of debris from third party property.

6. Ultimate Net Loss

The words “ultimate net loss”, wherever used in this policy, shall mean the amount the Insured is obligated to pay, by judgement or settlement, as damages resulting from a claim, including defense expenses in respect of such claim arising out of one occurrence.

7. Occurrence

The term “Occurrence” shall mean any one loss and/or series of losses arising out of and directly occasioned by one Act or series of related Acts of Terrorism for the same purpose or cause. The duration and extent of any one “Occurrence” shall be limited to all losses directly occasioned by one Act or series of Acts of Terrorism arising out of the same purpose or cause during any period of 72 consecutive hours commencing at the time of the first such act and within a radius of ten (10) miles of the location of the first such Act of Terrorism.

However for the purposes of this policy no period of 72 consecutive hours shall commence prior to the attachment of this Policy.

Conditions

This policy is subject to the following conditions:

1. Insolvency

The insolvency, bankruptcy, receivership or any refusal or inability to pay of the Insured and/or any insurer and/or any Underwriter shall not operate to:-

- a. deplete the underlying amount(s) and/or each occurrence retention set out in of the Declarations Page;
- b. increase Underwriter’s liability under this policy;
- c. increase any Underwriter’s share of liability under this policy.

In no event shall any Underwriter of this policy assume the responsibilities and/or obligations of the Insured and/or any insurer and/or any Underwriter.

2. Other Insurance

Where the Insured is, irrespective of this policy, entitled to be indemnified in whole or in part by any other insurance in respect of any damages which would otherwise have been indemnifiable in whole or in part by the Underwriters of this policy, there shall be no contribution or participation by the Underwriters of this policy on the basis of any deficiency, concurrent or double insurance for such damages or that part of such damages for which the Insured is entitled to be indemnified by such other insurance. This condition will apply whether or not the Insured is actually indemnified by such other insurance.

3. Notice of Claim

As a condition precedent to coverage under this Policy, immediate written notice must be given to Underwriters of any claim or circumstance that, alone or in combination with any other claims or circumstances, may give rise to liability.

For the purpose of this Condition 3 the Insured will notify Underwriters of any claim covered hereunder, or circumstances likely to give rise to a claim that would be covered hereunder, for which the Insured is alleged to be liable without regard to the amount of damages claimed.

4. Protection Maintenance

The Insured warrants that any protections and safeguards provided for the protection of persons and/or property shall be maintained in good order throughout the currency of this Policy and shall be in use at all relevant times, and that such protection shall not be withdrawn or varied without the consent of the Underwriters.

5. Prevention of Further Claims

As soon as the Insured becomes aware of an occurrence or receives a claim, the Insured shall promptly, and at its own expense, take all reasonable steps to prevent further Bodily Injury and/or Property Damage resulting from the same occurrence or conditions which may give rise to a similar occurrence.

6. Attachment of Liability

Liability to pay under this policy shall not attach unless and until the Insured has, with Underwriters' prior written consent, paid an amount of Ultimate Net Loss which exceeds the underlying amount and/or the each occurrence retention set out in the Declarations Page.

7. Defense

Underwriters shall not be called upon to assume the handling or control of the defense or settlement of any claim made against the Insured but Underwriters shall have the right, but not the duty, to participate with the Insured in the defense or settlement of any claim which may be indemnifiable in whole or in part by this policy.

Underwriters will indemnify the Insured for their several shares of any defense expenses incurred after exhaustion of the underlying amount or each occurrence retention, whichever is the greater, provided the prior written consent of Underwriters is obtained before those defense expenses are incurred and subject to Underwriters' limits of liability set out in the Declarations Page.

The Insured shall not admit liability for or settle any claim which may be indemnifiable in whole or in part by this policy without Underwriters written consent.

8. Appeals

In the event the Insured elects not to appeal, a judgement which may, in whole or in part, involve indemnity under this policy, Underwriters may, following discussion with the Insured, elect to make such appeal at their own cost and expense and shall be liable for the taxable costs and disbursements and any additional interest incidental to such appeal; but in no event shall the liability of Underwriters exceed the relevant limits of liability set out in the Declarations Page plus such cost, expense, costs, disbursements and interest.

9. Apportionment of Defense Expenses

Whenever any written demand received by the Insured for damages is finally resolved by a payment by the Insured which, regardless of the amount thereof, is only covered in part by this policy, then the percentage of any defense expenses that can be included in the Ultimate Net Loss recoverable hereunder shall be calculated by dividing that part of such payment which is covered by this policy, by the total amount paid by the Insured.

10. Loss Payable

Any amount for which Underwriters are liable under this policy shall be due and payable solely to the Insured's London agent within 30 days after it is agreed by Underwriters.

11. Subrogation

Where an amount is paid by Underwriters under this policy, the Insured's rights of recovery against any other person or entity in respect of such amount shall be exclusively subrogated to Underwriters. At Underwriters' request the Insured will assist, co-operate and lend its name to the exercise of Underwriters' rights of subrogation. The Insured is hereby authorized to waive any rights of recovery in relation to any other party, provided such waiver is given in writing prior to the relevant occurrence, subject to prior agreement by Underwriters.

12. Application of Recoveries

All recoveries or payments recovered or received subsequent to a payment by Underwriters under this policy, after deduction of all recovery expenses, shall be applied on a "top down" basis such that the last amount paid out in settlement of a loss shall be reimbursed first and all necessary adjustments shall then be made between the Insured and Underwriters, notwithstanding any rule or precedent to the contrary.

13. Waiver of Coverage

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this policy or stop Underwriters from asserting any right under this policy; nor shall any part of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by Underwriters.

14. Assignment

Assignment of interest under this policy shall not bind Underwriters unless and until their written agreement thereto is secured.

15. Cancellation

This Policy shall be non-cancellable by the Underwriters or the Insured except in the event of non-payment of premium where the Underwriters may cancel the Policy at their discretion.

In the event of non-payment of premium this Policy may be cancelled by or on behalf of the Underwriters by delivery to the Insured or by mailing to the Insured or the Broker by registered, certified, or other first class mail, at the Insured's address as shown in this Policy, written notice stating when, not less than ten) days thereafter, the cancellation shall be effective. The mailing of such notice shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

16. Law and Jurisdiction

Unless otherwise specifically noted herein to the contrary, this Policy is governed by the Laws of the United States of America. The parties hereto agree that disputes, which may arise hereunder, will be submitted to the Federal Courts of the United States alone, or if the parties so decide, to arbitration.

17. Arbitration

If the Assured and Underwriters fail to agree in whole or in part regarding any aspect of this Policy, each party shall, within ten (10) days after the demand in writing by either party, appoint a competent and disinterested arbitrator and the two chosen shall before commencing the arbitration select a competent and disinterested umpire. The arbitrators together shall determine such matters in which the Assured and Underwriters shall so fail to agree and shall make an award thereon, and

if they fail to agree, they will submit their differences to the umpire and the award in writing of any two, duly verified, shall determine the same.

18. Inspection and Investigation

Underwriters shall be permitted but not obligated to inspect the Insured's property and operations at any reasonable time. Neither Underwriters' right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are adequate or safe.

In addition to the notice requirements in this policy, on request by Underwriters, the Insured will provide full details of all occurrences or claims which could deplete the underlying amount, deplete the each occurrence retention or ultimately give rise to indemnity under this policy.

The Insured will co-operate fully with Underwriters should Underwriters decide to investigate any such occurrence or claim. Underwriters may examine and audit the Insured's books and records at any time during normal working hours, as far as they relate to the subject matter of this policy.

19. Cross Liability

In the event of claims being made by reason of Bodily Injury suffered by any employee of one Insured which does not arise out of the injured employee's employment, for which another Insured is liable, then this policy shall cover the Insured against whom such claim is made in the same manner as if separate policies had been issued to each Insured.

Nothing contained in this condition shall operate to increase Underwriters' limits of liability set out in the Declarations Page.

20. Onus of Proof

In any arbitration or other proceeding to enforce a claim for loss under this policy, the burden of proving that the loss is recoverable under this Policy and that no limitation or exclusion of this policy applies and the quantum of loss shall fall upon the Insured.