

# Contractors' Package Insurance Policy

In consideration of the Insured having paid or agreed to pay the premium stated in the Schedule to Bolttech Insurance (Hong Kong) Company Limited ("the Company"), the Company agrees, subject to the terms, exceptions and conditions contained in this Policy and any attachments or endorsements to the Policy, that, during the Period of Insurance stated in the Schedule (or during any further period in respect of which the Insured shall have paid and the Company shall have accepted premium) if the Insured sustains loss or damage or incurs liability in the circumstances provided for by this Policy, the Company will indemnify the Insured in the manner set out below.

## 1. General Definitions for All Sections

The following definitions apply for all sections of this Policy:

- 1.1 **The Company** means Bolttech Insurance (Hong Kong) Company Limited;
- 1.2 **Hong Kong** means the Hong Kong Special Administrative Region of the People's Republic of China.
- 1.3 **Insured** means the person or persons named on the Schedule;
- 1.4 **Period of Insurance** means the period of time specified in the Schedule during which this Policy is effective;
- 1.5 **Policy** means the entire policy contract between the Insured and the Company, including this Policy document, the application, Proposal and Declaration submitted or made by the Insured, the Schedule and any attachments or endorsements to this Policy;
- 1.6 **Schedule** means the pages attached to this Policy, specifying the details of the insurance contract.

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 vice versa.

## 2. General Exclusions for All Sections

### 2.1 Sanction Exclusion

Notwithstanding anything to the contrary in the Policy the following shall apply:

If, by virtue of any law or regulation which is applicable to the Company at the inception of this Policy or becomes applicable at any time thereafter, providing coverage to the Insured is or would be unlawful because it breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or The People's Republic of China/Hong Kong SAR, that the Company shall provide no coverage or benefit or have no liability whatsoever to the Insured, to the extent that it would be in breach of such law or regulation.

### 3. General Conditions for All Sections

- 3.1 This Policy is subject to the exclusive jurisdiction of Hong Kong and is to be construed according to the laws of the Hong Kong.
- 3.2 Any person or entity who is not a party to this Policy shall have no rights under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) to enforce any terms of this Policy.
- 3.3 The Policy and the Schedule 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 of the Schedule shall bear such meaning wherever it may appear.
- 3.4 The Company will send the Insured a renewal notice with the renewal terms (the terms may be different from this Policy) if the Company desire to renew this Policy. This Policy will be renewed if the required premium and documents for renewal are received by the Company in accordance with the renewal terms. The renewal of this Policy shall not constitute any waiver of the Company's right under this clause and/or the renewed Policy.

### Section I – Material Damage and Section II – Third Party Liability

#### 4. Section I – Material Damage (Operative Only if Specified in The Schedule)

- 4.1 The Company shall indemnify the Insured in respect of loss of or damage to the Insured Property described in the Schedule whilst at the Site during the Period of Insurance arising from any cause whatsoever not hereinafter excluded.
- 4.2 The Company shall not indemnify the Insured in respect of that part of the Works:
- 4.2.1 which has been taken into use or occupation by the Employer from the time of such taking into use or occupation or
  - 4.2.2 for which a Certificate of Completion has been issued from the expiry of 28 days from the date of completion certified therein;
  - 4.2.3 whichever of 4.2.1 or 4.2.2 is the earlier unless;
  - 4.2.4 such loss or damage be occasioned during the Maintenance Period stated in the Schedule and
  - 4.2.5 was caused by an occurrence during the Construction Period stated in the Schedule or
  - 4.2.6 was caused by an insured contractor in the course of complying with his obligations under the maintenance and defects liability clauses of the Contract.
- 4.3 Provided that the total liability of the Company under this Section shall not exceed the Sum Insured shown in the Schedule for each insured item.

#### Exceptions to Section I

- 4.4 The Company shall not indemnify the Insured in respect of:
- 4.4.1 loss or damage due to any fault, defect, error or omission in or failure of any design plan or specification;
  - 4.4.2 loss or damage due to defect in material or workmanship but this exception shall be limited to that part of the Insured Property directly affected and shall not exclude loss or damage to other parts of the Insured Property resulting from an accident due to such defect;
  - 4.4.3 loss of or damage to any item of machinery forming part of the Works or Constructional Plant due to its own explosion, mechanical or electrical breakdown or derangement but this exclusion shall not be deemed to exclude damage to other parts of the Works or Constructional Plant arising as a consequence of such explosion, breakdown or derangement;
  - 4.4.4 loss of Insured Property due to it being stolen or otherwise missing from the Site unless such loss is

- identifiable by the Insured with a specific occurrence;
- 4.4.5 loss of or damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps, deeds, bonds, bills of exchange, promissory notes and securities;
  - 4.4.6 loss of use, liquidated damages, penalties, performance guarantees or other consequential losses;
  - 4.4.7 loss or damage due to wear and tear, rust, mildew or other deterioration due to gradually operating causes;
  - 4.4.8 the cost of maintenance;
  - 4.4.9 loss of or damage to any locomotive, waterborne vessel, aircraft or vehicle other than any land vehicle which is used solely on the Site and which is not used on any public road or public highway to which any road traffic legislation applies;
  - 4.4.10 damage to tyres whilst attached to a vehicle or plant unless the vehicle or plant is damaged at the same time;
  - 4.4.11 loss or damage due to cessation of work whether total or partial.
  - 4.4.12 loss or damage that is not unforeseen or accidental in nature.

### **Conditions to Section I**

- 4.5 The Sum Insured shall in respect of Constructional Plant represent the new replacement value inclusive of erection, freight and customs.
- 4.6 If in the event of loss or damage to the Insured Property under Constructional Plant it is found that the Sums Insured are less than the amounts required to be insured the amount recoverable under this Policy shall be reduced in such proportion as the Sums Insured bear to the amounts required to be insured.
- 4.7 In the event of loss or damage to the Insured Property under the Item of Constructional Plant indemnifiable under this Policy the basis of loss settlement shall be :
  - 4.7.1 in the case of damage which can be repaired, the costs of necessary repairs without deduction for depreciation, however indemnification shall be limited to costs not exceeding the actual value of the damaged property;
  - 4.7.2 in the case of a total loss, the actual value of the Insured Property immediately before the occurrence of the loss less salvage.
- 4.8 In the event of loss or damage to the Insured Property the insurance hereunder shall be maintained in force during the Period of Insurance for the Sum Insured the Insured undertaking to pay an additional premium at the agreed rate on the amount of any loss exceeding HK\$100,000, pro rata from the date of such loss or damage to the expiry of the Period of Insurance but this additional premium shall be disregarded for the purpose of any adjustment of premium under General Condition 7.2 of this Policy.

### **5. Section II – Liability to Third Parties (Operative Only if Specified in The Schedule)**

- 5.1 The Company shall indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay for :
  - 5.1.1 accidental death, bodily injury, illness or disease suffered by any person arising out of the performance of the Contract described in the Schedule;
  - 5.1.2 accidental loss or damage to physical property arising out of the performance of the Contract described in the Schedule.
- 5.2 The liability of the Company under this section of the Policy for all compensation payable to any claimant or number of claimants in respect of or arising out of all occurrences of a series consequent on or attributable to one original cause shall not exceed the Limit of Indemnity specified in the Schedule.
- 5.3 In respect of any claim covered by this Section of the Policy the Company shall in addition be liable for :

- 5.3.1 all costs and expenses of litigation recovered by any claimant against the Insured;
  - 5.3.2 all costs and expenses of litigation incurred by the Insured with the written consent of the Company in resisting any claim.
- 5.4 Where the Insured consists of more than one party the insurance by this Section shall apply to each party as if a separate policy had been issued to each party.
- 5.5 Provided always that the aggregate liability of the Company shall not be increased beyond the Limit of Indemnity specified in the Schedule.

## Exceptions to Section II

- 5.6 The Company shall not indemnify the Insured in respect of :
- 5.6.1 liability in respect of death, bodily injury, illness or disease suffered by:
    - (a) Any person employed by any insured party for the purpose of execution of insured Contract or any parts thereof; and
    - (b) Any person to whom part or parts of the insured Contract have been sub-contracted including but not limited to self-employed sub-contractors.
  - 5.6.2 liability in respect of compensation claimed from the Insured by an injured person or dependent under any Employees Compensation Legislation;
  - 5.6.3 liability resulting from or attributable to or caused by the ownership or possession or use by or on behalf of the Insured of any locomotive, waterborne vessel, aircraft or vehicle other than any land vehicle which is used solely on the contract Site and which is not used on any public road or public highway to which any Road Traffic Legislation applies;
  - 5.6.4 liability compulsorily insurable under any legislation governing the use of motor vehicles;
  - 5.6.5 liability in respect of loss or damage to any building, property or structure caused by or resulting from vibration or by the removal or weakening of support;
  - 5.6.6 liability in respect of loss of or damage to property belonging to or in the care, custody or control of the Insured;
  - 5.6.7 liability in respect of loss or damage to permanent or temporary Works or materials forming part of the Contract or Contracts insured under this Policy;
  - 5.6.8 liability consequent upon any agreement by the Insured to pay any sum by way of indemnity or otherwise or predetermined penalties or liquidated damages imposed under any contract entered into by the Insured unless such liability would have attached also in the absence of such agreement, contractual penalty or liquidated damages;
  - 5.6.9 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, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity;
  - 5.6.10 liability in respect of claims arising out of
    - a) the rendering of or failure to render professional advice or service or any error or omission connected therewith or
    - b) any error in advice design formula or specification or
    - c) a breach of the duty owed in a professional capacity by the Insured.
  - 5.6.11 liability caused or occasioned by or contributed to, by or in connection with or as a result of or in consequence of or arising from or out of any goods or any containers thereof sold, supplied, hired out, constructed, erected, installed, repaired, altered, cleaned, processed, serviced or otherwise treated by or on behalf of the Insured and no longer in the Insured's possession or control.
- 5.7 This insurance does not cover any liability for:

- 5.7.1 Personal injury or bodily injury or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph 5.7.1 shall not apply to liability for personal injury or bodily injury or loss of or physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Period of Insurance.
- 5.7.2 The cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Period of Insurance.
- 5.7.3 Fines penalties, punitive or exemplary damages.

This Clause shall not extend this insurance to cover any liability which would not have been covered under this insurance had this Clause not been attached.

## 6. General Exceptions to Section I & II

- 6.1 The Company shall not indemnify the Insured in respect of loss, damage or liability directly or indirectly caused by or arising out of:
- 6.1.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, military or usurped power; or persons acting on behalf of or in connection with any political organisation with activities directed towards the overthrow or influencing of a government, de jure or de facto, by force, confiscation, nationalisation, commandeering, requisition or destruction or damage by order of any government, de jure or de facto, or by any public authority, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege;
- 6.1.2 strike, riot, lock out or persons taking part in labour disturbances;
- 6.1.3 This insurance does not cover loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with nuclear energy or radioactivity of any kind including but not limited to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
  - (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - (c) any weapon or other device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

In any action, suit or other proceeding where the Company alleges that by reason of the provisions of exceptions 6.1.1, 6.1.2 and 6.1.3 above 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 Terrorism Exclusion Endorsement

Notwithstanding any provision to the contrary within this policy or any endorsement thereto it is agreed that this policy excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with 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 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 Company alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this policy 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.

### 6.3 Terrorism Exclusion for Contamination & Explosives

It is agreed that, regardless of any contributory causes, this policy 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

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 of 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 Company alleges 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.

### 6.4 Cyber Risks Exclusion

Property damage covered under this policy 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 followings are excluded from this policy:

- (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.

### 6.5 Communicable Disease Exclusion Endorsement (LMA 5393 rev) – (Applicable to Sections I only)

1. Notwithstanding any provision to the contrary within this policy, this policy does not insure any loss, damage, liability, claim, cost, expense or other sum, directly or indirectly arising out of, attributable to, or occurring concurrently or in any sequence with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, damage, claim, cost, expense or other sum, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test:
  - 2.1. for a Communicable Disease, or
  - 2.2. any property insured hereunder that is affected by such Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid,

- liquid or gas or between organisms, and
- 3.3. the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured hereunder.
  4. This endorsement applies to all coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).
- All other terms, conditions and exclusions of the policy remain the same.

#### **6.6 Communicable Disease Exclusion (LMA 5396 rev) – (Applicable to Sections II only)**

1. Notwithstanding any provision to the contrary within this policy, this policy does not cover all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
2. For the purposes of this endorsement, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a Communicable Disease.
3. As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - 3.1. the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - 3.2. the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
  - 3.3. the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.

All other terms, conditions and exclusions of the policy remain the same.

#### **7. General Conditions to Sections I & II**

- 7.1 The expressions "Constructional Plant", "Certificate of Completion", "Contract", "Contractor", "Contract Sum", "Final Contract Sum", "Maintenance Period", "Site", "Specification" and "Works" shall bear the meaning ascribed to them in the Government of Hong Kong Special Administrative Region General Conditions of Contract for Civil Engineering Works/Building Works (1999 Edition).
- 7.2 If any change shall occur materially varying any of the facts upon which this Policy is based the Insured shall immediately give notice in writing to the Company and the premium shall be adjusted in accordance with any agreed rate.
- 7.3 The Insured shall within three months of the expiration of the Period of Insurance furnish to the Company a declaration of the Final Contract Sum and if such sum shall differ from the Contract Sum the premium shall be adjusted accordingly subject to any minimum retained premium previously agreed.
- 7.4 The Insured shall also take and cause to be taken all reasonable precautions to prevent loss damage or accident and shall comply with the "Construction Sites (Safety) Regulations" and any ordinance or regulation which might apply in respect of the insured Contract.
- 7.5 In the event of any occurrence which might give rise to a claim under this Policy the Insured shall:
  - 7.5.1 notify the Company as soon as possible and in writing give an indication as to the nature and extent of the damage;
  - 7.5.2 at the expense of the Company take such immediate action as is necessary to minimise the loss provided that such expenses shall not increase the Company ultimate loss;

- 7.5.3 keep parts affected and make them available for inspection by a representative or surveyor of the Company for a reasonable period of time but the Insured shall not in any case be entitled to abandon any property to the Company whether taken possession of by the Company or not;
  - 7.5.4 submit a formal claim and furnish all such information and documentary evidence as the Company may require within six months of the occurrence or such further time as the Company may in writing agree, such agreement not to be unreasonably withheld;
  - 7.5.5 inform and assist the police authorities in case of loss or damage due to theft or burglary or malicious action;
  - 7.5.6 immediately send to the Company upon receipt any writ summons or other proceedings which may be commenced against the Insured;
  - 7.5.7 give to the Company all information and assistance to enable the Company to settle or resist any claim or institute proceedings.
- 7.6 In the event of a claim or claims arising for which the Company could be liable under this Policy the Company shall be entitled:
- 7.6.1 to undertake in the name and on behalf of the Insured the absolute conduct and control of any proceedings and the settlement of the same;
  - 7.6.2 to take proceedings at their own expense and for their own benefit but in the name of the Insured to recover compensation or secure an indemnity from any third party in respect of anything covered by this Policy;
  - 7.6.3 to pay to the Insured in respect of any claim or claims the maximum liability of the Company under Section II of this Policy as stated in the Schedule or such lesser sum for which the said claim or claims can be settled (subject to deduction in either case of any sum or sums already paid on account for such claim or claims) and thereafter the Company shall be under no further liability in respect of said claim or claims except for payment of costs and expenses incurred prior to the date of such payment and for which the Company may be liable hereunder.
- 7.7 The Insured shall not negotiate, pay, settle, admit or repudiate any claim under the Policy without the written consent of the Company.
- 7.8 This insurance is not to be called upon in contribution and is only to pay any loss hereon if and so far as not recoverable under any other insurance.
- 7.9 All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder any such claim shall not within twelve 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.
- 7.10 Any unintentional or inadvertent error or omission, misrepresentation, misdescription or non-disclosure of any material facts in name or description of amount or reporting or notification in respect of this Policy by one of the Insured shall not operate to the prejudice of any of the other Insured's rights, providing the error or omission is corrected when discovered by the Insured.

### **Section III – Employees' Compensation** **(Operative only if specified in the Schedule)**



## 8. Cover

- 8.1 If any employee in the Insured's immediate employ shall sustain bodily injury or death by Accident occurring or Disease contracted during the Period of Insurance within the Geographical Area and arising out of and in the course of his employment by the Insured in the Business, the Company will subject to the Limit of Indemnity and to the terms exclusions and conditions contained in or endorsed on this Policy (all of which are hereinafter collectively referred to as "the Terms of this Policy") indemnify the Insured against his legal liability in respect of such bodily injury or death under the Ordinance and independently of the Ordinance to pay compensation and damages and claimant's cost and expenses and also indemnify the Insured against costs and expenses incurred by or on behalf of the Insured with the Company's written consent in connection therewith.

Provided that in the event of any change to the Ordinance during or subsequent to the Period of Insurance altering the legal liability of the Insured under the Ordinance the liability of the Company under this Policy shall be limited to such sums as the Company would have been liable to pay if the Ordinance had remained unaltered.

Further Provided That:

- (a) the due observance and fulfilment of the Terms of this Policy in so far as they relate to anything to be done or not to be done or to be complied with by the Insured; and
- (b) the truth of the statements and answers in the Proposal and Declaration and the Estimated Earnings Declaration and the Actual Earnings Declaration

shall be conditions precedent to any liability of the Company to make payment or to provide indemnity under this Policy.

The Company will also in the event of the death of the Insured indemnify the Insured's legal personal representatives in the Terms of this Policy in respect of liability incurred by the Insured provided that such legal personal representatives shall as though they were the Insured observe fulfill and be subject to the Terms of this Policy in as far as they can apply.

## 9. Definitions

The following definitions apply for this Section.

- 9.1 **Accident** means an accident or a series of accidents arising out of one event.
- 9.2 **The Business** means the usual work and activities carried on by the Insured pertaining to his business as specified in the Schedule and no others.
- 9.3 **Disease** means a disease contracted by an Employee of the Insured as a result of his exposure to the nature of his employment with the Insured. Such exposure may extend over a period of time and part of which period may fall outside the Period of Insurance under this Policy.
- 9.4 **Earnings** means all gross wages, salaries, remunerations, commissions, bonuses, overtime, termination payments, allowances and the like directors' fees or other benefits whether at piecework rates or otherwise and whether paid in cash or in kind by the Insured to his Employees.
- 9.5 **Employee** has the same meaning as assigned to that expression in the Ordinance.
- 9.6 **Noise-Induced Deafness** has the same meaning as assigned to that expression in the Occupational Deafness (Compensation) Ordinance (Chapter 469 of the laws of Hong Kong).
- 9.7 **The Ordinance** means the Employees' Compensation Ordinance (Chapter 282 of the laws of Hong Kong).
- 9.8 **Pneumoconiosis and Mesothelioma** have the same meaning as assigned to those expressions in the Pneumoconiosis & Mesothelioma (Compensation) Ordinance (Chapter 360 of the laws of Hong Kong).
- 9.9 **The Proposal and Declaration** 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.

- 9.10 **The Company's Indemnity** means indemnity provided under this Policy including costs and expenses incurred by or on behalf of the Insured with the Company's written consent.

## 10. Limit of Indemnity

- 10.1 In respect of any Accident or Disease giving rise to a claim or claims against the Insured for which indemnity is provided under this Policy the Company's indemnity to the Insured shall in the aggregate be limited to the amount specified in the Schedule as "Policy Limit of Indemnity" irrespective of the number of Employees who may sustain bodily injury or death consequent on or attributable to the same occurrence of Accident or Disease.
- 10.2 In relation to any liability of the Insured in respect of a Disease contracted by an Employee due to the nature of his employment with the Insured which nature of employment applies during a period that extends over more than one policy period of insurance:
- a) the aggregate of the Company's indemnity to the Insured under all insurance policies shall not exceed the limit of indemnity of the insurance policy that was in force at the time the nature of the Employee's employment to which such Disease was due first affected the Employee; and
  - b) subject to the limitation of paragraph (b)(i) hereof, the Company's Indemnity to the Insured under this Policy shall be limited to such proportion of the Insured's liability in respect of such Disease as that part of the Employee's period of employment falling within the Period of Insurance of this Policy bears to the total period of his employment to the nature of which such Disease was due.
- 10.3 If the occurrence of any Accident or Disease results in indemnity hereunder to more than one Insured, the limitations of the Company's liability specified in paragraphs (a) and (b) hereof shall apply to the aggregate of indemnity to all Insureds.
- 10.4 At any time after the occurrence of any Accident or Disease giving rise to a claim or claims against the Insured for which indemnity is provided under this Policy the Company may pay to the Insured the full amount of the Company's liability specified in paragraph (a) or (b) hereof (after the deduction of any sums already paid) or any lesser amount for which such claim or claims can be settled and shall relinquish the conduct of any defence settlement or proceedings relating to such claim or claims and shall not thereafter be responsible for any compensation damages or costs in respect thereof or for any costs or expenses whatsoever incurred by the Insured after the Company have relinquished such conduct or for any loss damage or expenses caused to the Insured in consequence of any act or omission of the Company in connection therewith or of the Company relinquishing such conduct.
- 10.5 If there should be any shortfall in the actual Earnings declared in accordance with paragraph (b) of INSURANCE PREMIUM of this Policy from the respective actual Earnings, the extent of the Company's Indemnity shall be reduced proportionately by the extent of under-insurance; and the balance shall be borne by the Insured himself. If no declaration of the actual Earnings by the Insured is received by the Company as prescribed, for the purpose of this clause the Earnings estimated by the Insured as at the commencement of the Period of Insurance shall be used in lieu of the actual Earnings that should have been declared to determine the extent of the under-insurance if any.

## 11. Jurisdiction Clause

- 11.1 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.

## 12. Exceptions to Section III

- 12.1 The Company shall not be liable under this Policy in respect of:
- 12.1.1 the Insured's liability to employees of contractors to the Insured;
  - 12.1.2 any liability of the Insured which attaches by virtue of an agreement but which would not have attached in the absence of such agreement;
  - 12.1.3 any sum which the Insured would have been entitled to recover from any party but for an agreement between the Insured and such party;
  - 12.1.4 any liability arising from Pneumoconiosis or Mesothelioma or Noise-Induced Deafness;
  - 12.1.5 the Insured's liability to any person who is not an employee of the Insured within the meaning of the Ordinance;
  - 12.1.6 any late payment surcharge fines penalties or punitive aggravated or exemplary damages for which the Insured may become liable under the Ordinance or independently of the Ordinance;
  - 12.1.7 any injury by Accident or Disease attributable to war invasion act of foreign enemy hostilities or warlike operations (whether war be declared or not) civil war mutiny rebellion revolution insurrection or military or usurped power;
  - 12.1.8 any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
    - a) nuclear weapons material;
    - b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel and for the purposes of this Exception combustion shall include any self-sustaining process of nuclear fission;
  - 12.1.9 any injury by Accident or Disease where the Company has not been given sufficient notice of the institution of proceedings in a court or tribunal to enable the Company to be added as a party to the proceedings.

## 12.2 Asbestos Exclusion

It is hereby understood and agreed that otherwise subject to the terms, exclusions and conditions contained in the policy or endorsed hereon, this insurance 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 in whatever form or quantity

## 12.3 Sanction Exclusion

Notwithstanding anything to the contrary in the Policy the following shall apply:

If, by virtue of any law or regulation which is applicable to the Company at the inception of this Policy or becomes applicable at any time thereafter, providing coverage to the Insured is or would be unlawful because it breaches any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, United States of America or The People's Republic of China/Hong Kong SAR, that the Company shall provide no coverage or benefit or have no liability whatsoever to the Insured, to the extent that it would be in breach of such law or regulation.

## 13. Avoidance of Certain Terms and Right of Recovery

- 13.1 If the Company is obliged by the Ordinance to pay an amount for which the Company would not otherwise be liable under this Policy the Insured shall forthwith repay such amount to the Company.

## 14. Insurance Premium

- 14.1 Prior to the commencement of the Period of Insurance, the Insured shall supply the Company with a declaration estimating the Earnings of the Employees employed in the Business during the Period of Insurance (which declaration is referred to herein as "the Estimated Earnings Declaration") on the basis of which a deposit premium becomes payable to the Company.
- 14.2 The Insured shall within ninety (90) days after the expiry of the Period of Insurance or upon cancellation of the Policy supply the Company with a completed Premium Adjustment and Declaration of Earnings Form stating the actual Earnings of Employees and provide the relevant supporting documents during

the Period of Insurance (which declaration is referred to herein as "the Actual Earnings Declaration"). If the actual Earnings shall differ from the estimated Earnings the difference in premium shall be met by a further proportionate adjustment premium to be paid to the Company or by a premium refund to the Insured as the case may be.

- 14.3 It is hereby declared that the Premium payable by the Insured in consideration of the indemnity provided under this Policy is the sum of the deposit premium and the adjustment premium calculated pursuant to paragraphs (14.1) and (14.2) hereof.
- 14.4 The name Hong Kong Identity Card number class of employment and Earnings of every Employee of the Insured employed in the Business from time to time during the Period of Insurance shall be properly recorded by the Insured and retained in a safe place so that a record exists of all persons who are Employees of the Insured for the purposes of this Policy and the Insured shall at all reasonable times allow the Company to inspect and obtain copies of such records.
- 14.5 If the Insured fails to cooperate with the Company in submitting the completed Premium Adjustment and Declaration of Earnings Form, without prejudice to any other rights of the Company, the Company shall retain the discretion not to renew this insurance upon expiry of the Policy.

## **15. Claims Settlement Conditions**

### **15.1 Claims Notification Demands etc.**

In the event of any occurrence which may give rise to a claim under this Policy 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.

### **15.2 Claims Control by the Company.**

The Company shall be entitled upon notice to the Insured to take over and conduct in the Insured's name the defence or settlement of any claim demand or proceedings against the Insured. In that event:

- a) the Insured shall provide all such information and assistance and forward all such documents and other records to the Company for the conduct of such claim demand or proceedings as the Company in its discretion may from time to time require; and
- b) the Insured shall not without the written consent of the Company incur any expenditure in connection with any such claim demand or proceedings or make any payment admission offer or enter into any settlement whatsoever.

### **15.3 Claims Payments by the Insured.**

Where the Insured pays all or any part of a claim for which he is liable and for which indemnity is provided by this Policy the Insured shall obtain duly witnessed signed receipts for such payments and shall retain in a safe place all such signed receipts and records and documents relating to such payments and the Insured shall at all reasonable times allow the Company to inspect and obtain copies of such records and documents.

### **15.4 Other Insurance.**

If at the time a claim is made by the Insured under this Policy there is any other insurance covering the same liability the Company shall not be liable to pay or contribute more than its rateable proportion of any such claim and costs and expenses in connection therewith.

### **15.5 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.

### **15.6 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.

## **16. General Conditions to Section III**

### **16.1 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.

### **16.2 Precautions.**

The Insured shall take all reasonable precautions to prevent Accidents and Diseases and shall comply with all relevant statutory requirements and obligations including but not limited to the provisions of the Factories and Industrial Undertakings Ordinance (Chapter 59 of the laws of Hong Kong) and any Regulations Rules or Notices issued made or promulgated thereunder.

### **16.3 Changes in Risk.**

The Insured shall immediately notify the Company in writing of any material change in the risk insured hereunder made by the Insured or any other person during the Period of Insurance including but not limited to:

- a) any merger with or acquisition of another company or business;
- b) the Insured or any subsidiary or holding company of the Insured being placed in voluntary liquidation receivership or liquidation or entering into a composition with its creditors or being unable to pay its debts from its own resources; or
- c) any material change in the nature of the Business or in the number of the Insured's Employees.

### **16.4 Right of Inspection.**

The Company shall have the right and opportunity at all reasonable times to inspect the works machinery plant and appliances used in the Business.

### **16.5 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.

### **16.6 Cancellation.**

This Policy may be cancelled by the Company or the Insured by written notice of cancellation from one party to the other. Cancellation shall take effect seven (7) days after the date of posting the notice of cancellation and in such event the Premium shall be adjusted in accordance with the provisions of "Insurance Premium".

### **16.7 Arbitration.**

All differences arising out of this Policy shall be determined by arbitration in accordance with the prevailing Arbitration Ordinance. If the parties fail to agree upon the choice of arbitrators or umpires, then the choice shall be referred to the Chairman for the time being of the Hong Kong International Arbitration Centre. It is 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.

### **16.8 Terrorism Endorsement.**

Notwithstanding any provision to the contrary in this Policy or any endorsement thereto it is hereby agreed that in respect of any bodily injury or death by accident or disease ("the Loss") directly or indirectly

caused by, resulting from or in connection with any act of terrorism or any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the Loss:

- a) the Limit of Indemnity shall be such amount which the Company actually receives from the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the Government") pursuant to an Agreement for Provision of Facility dated 11th January 2002 between the Government and the Company under which the Government agreed to make available to the Company and other direct insurance companies authorized to underwrite employees' compensation insurance business in Hong Kong a facility to enable them to meet claims under employees' compensation insurance policies in respect of death and injury arising out of an event of terrorism ("the Facility Agreement");
- b) the Company will only be required to make payment after it has received from the Government (i) an approval letter confirming that the Company should settle the claim and (ii) payment under the Facility Agreement; and
- c) for the avoidance of doubt, the Company shall have no obligation to make payment if for whatever reason it does not receive payment from the Government under the Facility Agreement, whether or not due to the Government's contention that the Loss does not fall within the scope of the Facility Agreement or the Company's breach of the Facility Agreement.

For the purpose of the above an act of terrorism means the use of force or violence or other means or the threat thereof, of any person or persons, whether acting alone or on behalf of or in connection with any organization or government, for political, religious, or ideological purposes with an intention to influence any government and/or to put the public, or any section of the public, in fear.

If the Company alleges that the Loss falls within the scope of this Endorsement, the burden of proving the contrary shall be upon the Insured.

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

Words and phrases in this Endorsement shall have the same meaning as in the Policy.