

## BUILDERS' RISK BUSINESS INCOME (AND DELAY IN START UP) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Common Policy Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions in this Coverage Form and Section H. - Definitions in the Builders' Risk Coverage Form.

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### A. COVERAGE

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "indemnity period" caused by direct physical loss of or damage to Covered Property. The loss or damage must be caused by or result from a Covered Cause of Loss.

Covered Property, as used in this Coverage Form, means property that is Covered Property under the Builders' Risk Coverage Form.

**1. Business Income**

Business Income means the sum of the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred from the operation or use of the applicable project for its intended purpose, including "rental value"; plus
- b. "Continuing operating expenses" incurred.

**2. Covered Causes Of Loss**

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is excluded or limited in:

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- a. Section B. Exclusions or Section C. Limitations of the Builders' Risk Coverage Form; or
- b. Section B. Exclusions And Limitations of this Coverage Form.

### 3. Additional Coverages

Unless *Not Covered* is indicated in the Builders' Risk Business Income Declarations, each of the following Additional Coverages applies subject to the Limit of Insurance shown in the Builders' Risk Business Income Declarations for such Additional Coverage. Unless otherwise specified, the Limit of Insurance shown in the Builders' Risk Business Income Declarations for each Additional Coverage applies in any one occurrence and in addition to the applicable Limit of Insurance.

#### a. Civil Authority

- (1) When a Covered Cause of Loss causes damage to property other than property at a job site described in the Builders' Risk Business Income Declarations, we will pay for the actual loss of Business Income you sustain caused by action of civil authority that prohibits access to the job site, provided that both of the following apply:
  - (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and such job site is within that area but are not more than 160 kilometres from the damaged property; and
  - (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.
- (2) Civil Authority coverage will begin 72 hours (unless a different number of hours is shown in the Builders' Risk Business Income Declarations) after the time of the first action of civil authority that prohibits access to the job site and will apply for a period of up to 30 consecutive days from the date on which such coverage began. Section D. Deductible does not apply to this Additional Coverage.
- (3) Payment under this Additional Coverage is included in and does not increase the applicable Limit of Insurance.

#### b. Expenses To Reduce Loss

In the event of a covered loss of Business Income, we will pay for the actual reasonable and necessary expenses you incur, except the cost of extinguishing a fire, to avoid further loss of Business Income. The total of our payment for Business Income loss and Expenses To Reduce Loss will not be more than the Business Income loss that would have been payable under this Coverage Form if the Expenses To Reduce Loss had not been incurred. Payment under this Additional Coverage is included in and does not increase the applicable Limit of Insurance.

#### c. Ingress Or Egress

- (1) When a Covered Cause of Loss causes damage to property that is away from, but within 1,600 metres of the job site described in the Builders' Risk Business Income Declarations, we will pay for the actual loss of Business Income you sustain caused by the prevention of ingress to or egress from the job site (other than as provided under the Civil Authority Additional Coverage).
- (2) Ingress Or Egress Coverage for Business Income will begin 24 hours (unless a different number of hours is shown in the Builders' Risk Business Income Declarations) after the time ingress to or egress from the job site is first prevented and will apply for a period of up to 30 consecutive days. Section D. Deductible does not apply to this Additional Coverage.
- (3) Payment under this Additional Coverage is included in and does not increase the applicable Limit of Insurance.

#### d. Ordinance Or Law - Increased Indemnity Period

- (1) If direct physical loss or damage by a Covered Cause of Loss occurs to Covered Property at a job site described in the Builders' Risk Business Income Declarations, we will pay for the actual

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loss of Business Income you sustain during the reasonable and necessary increase in the "indemnity period" caused by or resulting from the enforcement of any ordinance or law which:

- (a) Regulates the demolition, construction or repair of any Covered Property or establishes zoning or land use requirements at the job site;
- (b) Requires the demolition of undamaged parts of Covered Property not damaged by a Covered Cause of Loss; and
- (c) Is in force at the time of loss.

However, this Additional Coverage applies only to the increased period required to repair, reconstruct or remodel the Covered Property to comply with the minimum standards of such ordinance or law.

(2) This Additional Coverage does not apply to any loss caused by or resulting from:

(a) The enforcement of any ordinance or law which requires:

- (i) The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", virus or bacteria; or
- (ii) Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", virus or bacteria;

or

(b) The enforcement of any ordinance or law which:

- (i) You were required to comply with before the loss, even if the Covered Property was undamaged; and
- (ii) You failed to comply with.

(3) The Ordinance Or Law exclusion in Section **B.1.d.** of the Builders' Risk Coverage Form does not apply to the insurance specifically provided under this Additional Coverage.

**e. Pollutant Cleanup And Removal**

(1) You may extend the insurance provided by this Coverage Form for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "indemnity period" to apply to the actual amount of such loss of Business Income that you incur during the increased period of time necessarily required to extract "pollutants" from land or water at the job site.

(2) The insurance provided under this Additional Coverage applies only if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" into the land or water is caused by or results from direct physical loss or damage by a Covered Cause of Loss which occurs:

- (a) At a job site described in the Builders' Risk Business Income Declarations;
- (b) To Covered Property; and
- (c) During the "project period".

(3) The Limit of Insurance shown for Pollutant Cleanup And Removal in the Builders' Risk Business Income Declarations is the most we will pay under this Additional Coverage for the sum of all covered Business Income losses arising out of all Covered Causes of Loss occurring in any "project period".

**f. Professional Fees**

(1) You may extend the insurance provided by this Coverage Form to apply to the reasonable expenses you incur preparing claim data when we require it to adjust a covered loss. This includes the cost of preparing income statements and other documentation to show the extent of loss.

(2) We will not pay for:

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- (a) Any expenses incurred, directed or billed by or payable to lawyers, insurance adjusters including public adjusters, or their associates or subsidiaries;
- (b) Any costs as provided in the Loss Condition E.1. Appraisal; or
- (c) Any expenses incurred, directed or billed by or payable to insurance brokers or agents or insurance consultants, or their associates or subsidiaries, without our written consent prior to such expenses being incurred.

## B. EXCLUSIONS AND LIMITATIONS

The following exclusions and limitations apply in addition to the exclusions and limitations contained in the Builders' Risk Coverage Form.

We will not pay for:

### 1. Changes In Plans

Any increase in loss due to delay that is caused by the correction, alteration, addition, improvement or changes made in the construction plans during repair or replacement of lost or damaged Covered Property.

This exclusion does not apply to the extent coverage is provided under the Ordinance Or Law – Increased Indemnity Period Additional Coverage.

### 2. Lack Of Funds Or Workforce

Any increase in loss due to lack of funds or workforce.

### 3. Other Consequential Loss

Any other consequential loss including fines and penalties.

### 4. Property In Transit By Aircraft

Any loss caused by or resulting from direct physical loss of or damage to Covered Property in transit by aircraft.

### 5. Strike, Cancellation Of Contract

Any increase in loss caused by or resulting from:

- a. Delay in rebuilding, repairing or replacing Covered Property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
- b. Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "indemnity period".

## C. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Builders' Risk Business Income Declarations or any schedules or endorsements that are a part of this Coverage Form.

## D. DEDUCTIBLE

Coverage for loss of Business Income is subject to the applicable Deductible, if any, shown in the Builders' Risk Business Income Declarations:

### 1. Waiting Period – Business Days

If a "business day" deductible applies to your Business Income coverage, we will not pay for loss of Business Income in any one occurrence that is incurred during the period of time that begins:

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- a. With the "planned completion date", for Covered Property not operating or in use for its intended purpose at the time of such loss or damage; or
  - b. At the time of direct physical loss or damage that triggers the Business Income coverage, for Covered Property operating or in use for its intended purpose at the time of such loss or damage;
- and continues for the consecutive number of "business days" shown in the Builders' Risk Business Income Declarations as the applicable Business Income Deductible.

## 2. Dollar Amount

If a dollar amount deductible applies to your Business Income coverage, we will not pay for loss of Business Income in any one occurrence until the amount of covered Business Income loss exceeds the applicable dollar amount deductible indicated in the Builders' Risk Business Income Declarations. We will then pay the amount of Business Income loss in excess of the dollar amount deductible up to the applicable Limit of Insurance.

## E. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions, the Loss Condition - Duties In The Event Of Loss Or Damage in the Builders' Risk Coverage Form and the Additional Conditions in the Builders' Risk Coverage Form:

### 1. Appraisal

If we and you disagree on the amount of Net Income and "continuing operating expenses" or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser within 30 days of the written demand. Within 15 days of each party selecting an appraiser, the two appraisers will select an umpire. If they cannot agree within that 15 day period, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and "continuing operating expenses" or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

### 2. Duties In The Event Of Loss

You must see that the following are done in the event of loss:

- a. If any portion of Covered Property was in operation or use for its intended purpose at the time of loss, you must resume all or part of the operation or use as quickly as possible if you intend to continue your business.

This includes using:

- (1) Damaged or undamaged property at your job site or elsewhere; or
- (2) Temporary or substitute:
  - (a) Facilities, services, suppliers or customers; or
  - (b) Machinery, equipment, supplies or materials.

- b. If any portion of the Covered Property was under construction at the time of loss, you must make every effort to meet the applicable "planned completion date".

This includes:

- (1) Resuming, as soon as possible, all or any part of the construction or repair; or
- (2) Using temporary or substitute:
  - (a) Facilities, services, suppliers or customers; or

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- (b) Machinery, equipment, supplies or materials.
- c. Notify us of any payment you receive from others due to a delay in the completion of construction beyond the "planned completion date".
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, or make every effort to meet the applicable "planned completion date", we will only pay the amount of loss we would have otherwise paid if you had complied with the above conditions.

### 3. Loss Determination

The amount of Business Income loss will be determined based on:

- a. The Net Income of the business before the direct physical loss or damage occurred;
- b. The likely Net Income of the business if no physical loss or damage occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business as a result of favourable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- c. The "continuing operating expenses" necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
- d. Other relevant sources of information, including:
  - (1) Your financial records and accounting procedures;
  - (2) Bills, invoices and other vouchers; and
  - (3) Deeds, liens or contracts.

### 4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Form and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

## F. DEFINITIONS

1. **"Business day"** means a day, ending at midnight, during which you normally conduct "operations". The first business day begins at the time of loss. If the loss occurs after you have stopped conducting normal "operations", we will consider the first day to be the next day on which you would normally conduct "operations".
2. **"Continuing operating expenses"** means those operating expenses that continue to be incurred in whole or in part after direct physical loss of or damage to Covered Property by a Covered Cause of Loss results in a necessary "suspension" of your "operations" at a job site described in the Builders' Risk Business Income Declarations.  
But "continuing operating expenses" does not include:
  - a. Depreciation of buildings;
  - b. Depreciation of personal property;
  - c. Payroll expense, except for payroll to permanent staff, foremen, and important employees whose services will not discontinue in the event of the "suspension" of your "operations".
3. **"Indemnity period"**
  - a. "Indemnity period" means the period of time after direct physical loss of or damage to Covered Property by a Covered Cause of Loss that:
    - (1) With respect to Covered Property not operating or in use for its intended purpose at the time of such loss or damage, begins with the "planned completion date" or after any applicable Waiting

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Period shown in the Builders' Risk Business Income Declarations from the "planned completion date", whichever is later; or

- (2) With respect to Covered Property operating or in use for its intended purpose at the time of such loss or damage, begins immediately or after any applicable Waiting Period shown in the Builders' Risk Business Income Declarations, whichever is later; and

ends no later than the number of months shown in the Builders' Risk Business Income Declarations during which time your Business Income continues to be affected as a direct result of direct physical loss or damage to Covered Property caused by or resulting from a Covered Cause of Loss.

- b. "Indemnity period" does not include any increased period required due to the enforcement of any ordinance or law that:

(1) Regulates the demolition, construction or repair of any property or establishes zoning or land use requirements at the job site, except as provided in the Ordinance Or Law - Increased Indemnity Period Additional Coverage; or

(2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", except as provided in the Pollutant Clean Up And Removal Additional Coverage.

- c. In determining the ending dates in Paragraphs **a.(1)** and **a.(2)** above, we will account for the time necessary to certify or re-certify the Covered Property to its designed level of "green" certification in accordance with the "green authority" standards that exist at the time of repair or replacement, even if the standards have changed since the original certification was planned or achieved.

- d. The expiration date of this policy will not cut short the "indemnity period".

4. "**Operations**" means your business activities occurring at a job site described in the Builders' Risk Business Income Declarations and the tenantability of such job site.

5. "**Rental value**" means Business Income that consists of:

a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the covered project as furnished and equipped by you, including fair rental value of any portion of such covered project which is occupied by you; and

b. "Continuing operating expenses" incurred in connection with the job site, including the amount of charges which are the legal obligation of the tenant but would otherwise be your obligation.

6. "**Suspension**" means:

a. A delay in start up of your business activities;

b. The partial or complete cessation of your business activities; or

c. That a part or all of a job site described in the Builders' Risk Business Income Declarations is rendered untenable.

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