

## **BAILEES LIABILITY INSURANCE POLICY**

The Insured named in the Schedule carrying on the Business described in the Schedule and no other has for the purpose of this insurance made to MSIG Insurance (Vietnam ) Co., Ltd ("the Company") a proposal and declaration which is the basis of and deemed to be incorporated within this contract and has paid or agreed to pay the Premium stated in the Schedule or the renewal premium for any subsequent period.

### **COVER**

#### **CARRIER'S LIABILITY - covered only if specified in the Schedule**

Subject to the terms exceptions and conditions contained, endorsed or attached to this Policy, the Company agrees to indemnify the Insured for all amounts which the Insured shall become legally liable to pay consequent upon accidental physical loss of or damage to the Property of others which occurs

- (a) as a result of accidents in connection with the Insured's Business;
- (b) while the Property is under the charge or control of the Insured or any servant or agent of the Insured while in the course of his duty as such servant or agent;
- (c) between the time that the Property is collected by the Insured its servants or agents for immediate transit and the time the Property is delivered at destination by Vehicles owned or operated by the Insured, or Vehicles which may temporarily be hired by the Insured, for the purpose of conveying Property in connection with the Insured's Business;
- (d) within the Geographical Limit stated in the Schedule;
- (e) during the Period of Insurance.

#### **WAREHOUSEMAN'S LIABILITY - covered only if specified in the Schedule**

Subject to the terms exceptions and conditions contained, endorsed or attached to this Policy, the Company agrees to indemnify the Insured for all amounts which the Insured shall become legally liable to pay consequent upon accidental physical loss of or damage to the Property of others which occurs

- (a) as a result of accidents in connection with the Insured's Business;
- (b) while the Property is under the charge or control of the Insured or any servant or agent of the Insured while in the course of his duty as such servant or agent;
- (c) while the Property is stored in warehouses operated by the Insured or solely occupied by the employees or agents of the Insured, located at the Situations specified in the Schedule;
- (d) within the Geographical Limit stated in the Schedule;
- (e) during the Period of Insurance.

**AND** in respect of the indemnity afforded by the Policy the Company will in addition indemnify the Insured for all costs and expenses of litigation

- (a) recovered by any claimant against the Insured.
- (b) incurred with the written consent of the Company.

**PROVIDED THAT** the Company shall not be liable to pay more than the Limit of Liability.

### **LIMIT OF LIABILITY**

The liability of the Company for all sums payable to any claimant or any number of claimants in respect of or arising out of Any One Occurrence inclusive of the costs and expenses of litigation recovered by any claimant against the Insured and that incurred with the written consent of the Company shall not exceed the Limit of Liability for Any One Occurrence stated in the Schedule.

The total aggregate liability of the Company inclusive of the costs and expenses of litigation recovered by any claimant against the Insured and that incurred with the written consent of the Company for all occurrences during the Period of Insurance shall not exceed the Limit of Liability for Any One Period stated in the Schedule.

### **JURISDICTION CLAUSE**

The indemnity provided by this Policy will not apply in respect of judgements which are not in the first instance delivered by or obtained from a Court of competent jurisdiction within the Social Republic or Vietnam nor to orders obtained in the said Court for the enforcement of judgements made outside the Social Republic of Vietnam by way of reciprocal provisions or otherwise.

### **EXCEPTIONS**

The indemnity expressed in this Policy will not apply to the Insured's liability for loss, damage or destruction

#### 1. of property

(i) belonging to or

(ii) held under a hire purchase or conditional purchase agreement by or

(iii) hired, leased, rented or lent to

(iv) carried gratuitously or as an accommodation by

the Insured or any servant or agent of the Insured whilst in the course of his duties as such.

2. of or to bullion, cash, jewellery, precious stones, precious metals, accounts, bills, currency, deeds, manuscripts, drawings, evidence of debt, money notes or securities, explosives or corrosive, toxic or highly flammable goods or materials, livestock, live plants, vaccines or other property which present a comparable degree of risk or hazard.

3. caused by explosives or corrosive, toxic or highly flammable goods or materials or other property which present a comparable degree of risk or hazard.

4. caused by rust, wear and tear, gradual deterioration, moths, vermin, inherent vice or damage sustained due to or resulting from any repairing, restoration or retouching process.
5. due to atmospheric or climatic conditions unless reasonable precautions have been taken to protect the property against such destruction or damage.
6. arising from the wilful illegal sale of or the wilful conversion and/or wilful or wrongful secretion of property by the Insured, the Insured's employees and/or any person.
7. arising from or traceable to documentation errors and/or omissions or wrongful delivery or misdelivery.
8. arising from or traceable to the infidelity of the Insured's employees and/or any person to whom the property is entrusted.
9. of property occasioned by or happening through any unexplained loss, mysterious disappearance or loss or shortage discovered on taking inventory.
10. caused by or resulting from inadequate packing, delay or loss of market.
11. of property in warehouses due to changes of temperature unless resulting from the total or partial destruction of any refrigerating or cooling apparatus from any cause.
12. due to forged warehouse receipts.
13. caused by theft or attempted theft from any Vehicle or any unexplained shortage of the Property whilst the Vehicle is unattended by the driver or mate unless all windows doors and other means of access are fully closed fastened and locked and all keys including the ignition and starting keys removed from the Vehicle to a place of safety.
14. arising from the use of any trailer or mechanically propelled Vehicle while the driver of such Vehicle is
  - (i) under the influence of intoxicating liquor or drugs
  - (ii) not the holder of a valid motor driver's licence in respect of the said Vehicle.Provided however, that sub-section (ii) of this clause shall have no application if such driver has held and is not disqualified from holding or obtaining and actually obtains such a licence without a further driving test or if any mechanically propelled Vehicle is being used for the purposes of teaching a learner to drive if all requirements of the law in that connection are being complied with.
15. of property being carried in a controlled atmosphere or in refrigerated frozen chilled or insulated conditions due to loss of refrigerant or controlled atmosphere or variation in temperature unless caused directly by fire, lightning, storm or by the collision or over-turning of the conveying Vehicle
16. of property
  - (i) which is warehoused whether temporarily or otherwise, if the Insured only has Carrier's Liability cover under this Policy.
  - (ii) in transit, if the Insured only has Warehouseman's Liability cover under this Policy.

17. arising from error or omission in design specification or professional or other advice remedial or other treatment given administered or prepared by the Insured or by any person acting on behalf of the Insured.

18. arising from seepage pollution or contamination including the cost of removing nullifying or cleaning up seeping polluting or contaminating substances.

The indemnity expressed in this Policy will not apply to

19. liability assumed by the Insured under any Agreement, oral or written, unless such liability would have attached to the Insured notwithstanding such Agreement.

20. loss of use or consequential loss of any kind or description consequent upon any loss or destruction of or damage to the Property.

21. liability directly or indirectly caused by or in consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority or confiscation or nationalisation.

22. liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

(ii) nuclear weapons material.

23. liability in respect of which the Insured is or would but for the existence of this Policy be indemnified under any other policy of insurance; in such case the indemnity under this Policy shall not apply until the full amount of indemnity under such other policy has been applied as far as it shall go in satisfaction of the liability.

24. any fine or penalty imposed upon the Insured or any punitive, aggravated or exemplary damages awarded against the Insured.

25. the first amount of the claims arising out of Any One Occurrence specified in the Schedule as the Excess.

## **DEFINITIONS**

"Property" means goods held by the Insured in trust or commission and for which the Insured is responsible.

"Vehicle" means

(a) a motor vehicle

(b) an articulated vehicle with trailer attached

(c) a detached trailer

(d) an offloaded container

together with Container(s) if carried.

"Occurrence" shall mean any event which result in loss destruction or damage to the property insured neither expected nor intended from the standpoint of the Insured. All occurrences arising directly or indirectly from one source or original cause shall be deemed one Occurrence.

## **GENERAL PROVISIO**

This policy will only apply if, at the time of any loss, destruction or damage giving rise to a claim

1. all warehouses are used by the Insured solely for storage or offices.
2. all Property is sound and suitable for storage purposes and the acceptance by the Insured of such Property for storage purposes is subject to the conditions of the Insured's warehouse receipt a copy of which must be signed and acknowledged by the owner of the said Property (or his authorised agent).
3. the Insured holds such licences as are required by the local municipal or other authorities and has complied with the conditions and requirements of such licences at all times.

## **CONDITIONS**

### **ONE CONTRACT**

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 the Policy or the Schedule shall bear such specific meaning wherever it may appear.

### **NOTICE**

Every notice or communication to be given or made under this Policy shall be delivered in writing to the Company.

### **CLAIMS**

- (i) The Insured must give notice to the Company of any accident claim whether groundless or not impending prosecution proceedings arising from loss or damage to property immediately the same comes to the knowledge of the Insured or his representative and must forward to the Company immediately upon receipt every written notice or information as to any verbal notice of claim and all other matters relating to the accident claim impending prosecution or proceedings.
- (ii) The Insured shall not incur any expense enter into any litigation make any payment settlement or admission of liability in respect of any accident or claim for which the Company shall be liable under this Policy without the written consent of the Company which shall be entitled if it so desires to take over the conduct in the Insured's name the defence or settlement of any claim or to prosecute in the Insured's name for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.
- (iii) At any time after the happening of any occurrence giving rise to a claim or series of claims under this Policy the Company may pay to the Insured the full amount of the Company's liability or any smaller sum for which those claims can be settled less any applicable Excess and relinquish the conduct of any claim defence or proceedings and the Company shall not be responsible for any damage loss or liability alleged to have been caused to the Insured in consequence of any alleged act or omission of the Company in connection with such claim defence or proceedings or of the Company

relinquishing such conduct nor shall the Company be liable for any costs or expenses whatsoever incurred by the Insured or any claimant or other person after the Company shall have relinquished such conduct.

(iv) If the Company shall offer an amount in settlement or disclaim liability for any claim under this Policy and such claim shall not within twelve calendar months from the date of such offer or disclaimer have been referred to arbitration under the provisions contained in the Policy or been made subject to pending court action then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable under this Policy.

## **REASONABLE CARE AND PRECAUTIONS**

The insured must at all times exercise reasonable care to avoid accidents and must take all reasonable precautions for the safety of the Property including the proper selection and supervision of employees, proper selection of agents and ensuring that the Vehicles, buildings, ways, plant, machinery and fittings are in proper order.

## **FRAUD**

If the Insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise this Policy shall become void and all claims under this Policy shall be forfeited.

## **PREMIUM ADJUSTMENT**

If the premium for this Policy has been calculated on any estimates furnished by the Insured, the Insured shall keep an accurate record containing all relevant particulars and shall at all times allow the Company to inspect such record. The Insured shall within one calendar month from the expiry date of each Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such Period of Insurance shall then be adjusted and the difference paid by or allowed to the Insured as the case may be subject to receipt and retention of any minimum premium applicable.

## **MATERIAL CHANGE**

If at any time or from time to time any change shall occur materially varying any of the facts existing at the date of the proposal the Insured shall within one calendar month give notice in writing to the Company and the premium may thereupon be adjusted for the unexpired period and the difference paid by or allowed to the Insured as the case may be.

## **CANCELLATION**

The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at its last known address and in such event will return to the Insured the premium paid less the pro rata portion thereof for the period the Policy has been in force. The Policy may be cancelled at any time by the Insured by giving seven days' notice to the Company and provided no claim has arisen during the then current Period of Insurance the Insured shall be entitled to a return of premium subject to the Company's short period rates for the period the Policy has been in force and subject to any adjustment of premium required by the terms or conditions of this Policy.

## **ARBITRATION**

If any difference shall arise as to the amount to be paid under this Policy (liability being otherwise admitted), such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions in that behalf for the time being in force. Where any difference is by this condition to be referred to arbitration the making of an award shall be a condition precedent to any right of action against the Company.

## **TIME LIMIT**

If the Company offers an amount in settlement or disclaims liability for any claim under this Policy and such claim is not within twelve calendar months from the date of such offer or disclaimer referred to arbitration as provided, or made subject to pending Court action then the claim will for all purposes be deemed to have been abandoned and shall not be recoverable under this Policy.

## **DUE OBSERVANCE**

The due observance and fulfilment of the terms provisions and conditions of this Policy insofar as they relate to anything to be done or not to be done by the Insured and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.